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INDIAN CHILD WELFARE ACT ANNUAL CASE LAW UPDATE AND COMMENTARY

Kathryn Fort
Michigan State University College of Law

Adrian T. Smith
Youth, Rights & Justice

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Kathryn E. Fort and Adrian T. Smith

I. ABSTRACT

Annually there is an average of 200 appellate cases dealing with the Indian Child Welfare Act (ICWA) —though this includes published and unpublished opinions.[536] Since our first annual review of the case law in 2017, the numbers remain stable. There are approximately thirty reported state appellate court cases involving ICWA each year. This annual review is the only systematic look at the ICWA cases on appeal, including an analysis of who is appealing, what the primary issues are on appeal, and what topical trends are.

This article provides a comprehensive catalogue of published ICWA cases from across all fifty states in 2019. Designed as a quick reference for the ICWA practitioner, this article summarizes key

[536] Data on file with the authors and journal. Data is collected from both Westlaw and Lexis over the course of the year via case alerts that collect cases from all fifty states and using the search terms "Indian Tribe", "American Indian", "Native American." The cases are sorted into an Excel spreadsheet with case name, date, court, state, whether the case is reported or not, the top two issues, up to three named tribes, the outcome of the case, and who appealed the case. Because the data is over 200 cases, the document is on file with the authors and the journal. All reported cases from the data set are listed at the end of the article.

case decisions that have interpreted the law in meaningful, significant, or surprising ways and tracks current attempts by ICWA's opponents to overturn the law piece-by-piece and in its entirety. By providing an overview of last year's ICWA cases this article is meant to keep practitioners up-to-date so that they can be effective in the juvenile courtroom without sorting through and reading the dozens of cases published across all fifty jurisdictions.

II. INTRODUCTION

In 1978 Congress acknowledged "that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families" and that this led to "an alarmingly high percentage of Indian families [being] broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies."[537] To address this nation-wide issue, Congress passed the Indian Child Welfare Act.[538] ICWA created "minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes" that state administrative and judicial bodies must follow.[539]

ICWA, which is grounded in the federal government's trust responsibility to tribes and Indian people, holds a unique place in child welfare jurisprudence.[540] It is a federal law that must be implemented in state courts—jurisdictions where there is a great deal of legislative diversity.[541] Because of this fundamental structure

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537 25 U.S.C. § 1901(4)-(5) (2012).

538 25 U.S.C. § 1901 (2012). *See also* Native American Rights Fund, A Practical Guide to the Indian Child Welfare Act. B.J. JONES ET AL. THE INDIAN CHILD WELFARE ACT HANDBOOK (2nd ed. 2008) https://www.narf.org/nill/documents/icwa/ [https://perma.cc/7R35-WJAV] (overview of ICWA's provisions, requirements, and an introduction to the law); *NCJFCJ Releases Indian Child Welfare Act Judicial Benchbook*, NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, (Oct. 31, 2017) http://www.ncjfcj.org/ICWABenchbook [https://perma.cc/2UEM-BHX4].

539 25 U.S.C. § 1902 (2012).

540 S*ee also* 25 U.S.C. § 1901(1)-(2) (2012).

541 While federal funding under IV-E of the Social Security Act requires states to pass certain standards for foster care placements and termination of parental rights, there are many areas of state law that vary by state. *See, e.g., Consent to Adoption*, CHILD WELFARE INFORMATION GATEWAY (2017),

court decisions make up the body of ICWA case law and have influence beyond the state in which they are decided. That is because state courts often turn to "sister jurisdictions" when deciding matters related to ICWA precisely because it is a federal law applied across the states.[542] For this reason, unlike other child dependency attorneys, an ICWA practitioner must stay up to date on decisions from every state. This can be particularly difficult for practitioners with an active caseload and limited access to legal databases, such as in-house tribal ICWA attorneys, parents' attorneys, children's attorneys, and guardians ad litem. It has become increasingly evident that practitioners are in need of an annual published account of the relevant case law.[543]

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https://www.childwelfare.gov/pubPDFs/consent.pdf [https://perma.cc/4ABK-AQ6S]; *Representation of Children in Child Abuse and Neglect Proceedings*, CHILD WELFARE INFORMATION GATEWAY (2014) https://www.childwelfare.gov/pubPDFs/represent.pdf [https://perma.cc/S23Y-YKHP]; *Rights of Unmarried Fathers*, CHILD WELFARE INFORMATION GATEWAY, (Month Day, (2014), https://www.childwelfare.gov/pubPDFs/putative.pdf [https://perma.cc/UF9V-JCTP]; *Definition of Child Abuse and Neglect*, CHILD WELFARE INFORMATION GATEWAY (2016) https://www.childwelfare.gov/pubPDFs/define.pdf [https://perma.cc/CA7Q-JUU6] (Vocabulary across the states varies tremendously. Indeed, the authors of this article debated whether to call them "child abuse and neglect cases," as they are referred to in Michigan, or "child dependency cases," as they are called in Oregon).

[542] *See, e.g.*, *Dept. of Human Serv. v. J.G.,* 260 Or. App. 500, 515, 317 P.3d 936, 946 (2014) (looking to decisions of sister states when interpreting ICWA); *In re* Esther V., 2011-NMSC-005 149 N.M.315, 323, 248 P.3d 863, 871; *In re* Welfare R.S., .805 N.W.2d 44, 65 (Minn. 2011); People *ex rel.* A.R., 310 P.3d 1007, 1014, 2012 COA 195M, (Colo. App. 2012); *In re* S.R.K, 911 N.W.2d 821, 829 (Minn. 2018).).); *See also In re* N.B., 199 P.3d 16, 19 (Colo. App. 2007) (collecting cases from the "several states" regarding ICWA's application in step-parent adoptions), cited in *In re* T.A.W., 383 P.3d 492 (Wash. 2016) (applying WICWA to step-parent adoptions), which was further cited and discussed by S.S. v. Stephanie H., 241 Ariz. 419, 388 P.3d 569, 574 (Ct. App. Div. 1 2017) (applying ICWA to a private abandonment and step-parent adoption proceeding).

[543] Professor Fort heads the ICWA Appellate Project at MSU College of Law. In 2017, her clinic handled inquiries in sixty-three different cases from more than twenty states and from more than thirty tribes. In 2018, the clinic handled additional inquires in more than forty cases from more than thirty tribes. Additionally, for the past few years, Professor Fort has collected ICWA cases and discussed them online, but the need for a formal compendium has become increasingly obvious based on the inquiries both authors receive from around the country on a weekly basis. *See ICWA Appellate Project*, TURTLETALK, https://turtletalk.wordpress.com/icwa/ [https://perma.cc/XLF7-F3C5].

Although much of family law is under the purview of the states,[544] ICWA's federal protections apply when there is a state child custody proceeding[545] involving an Indian child.[546] Some of the requirements--the minimum federal standards--of ICWA include that the state inquire into the membership status of a tribal child,[547] provide tribes and parents notice in child welfare proceedings,[548] ensure that tribes are given the opportunity to intervene in the such proceedings[549] or transfer jurisdiction to the tribal court,[550] require that the party removing a child or terminating parental rights has provided active efforts to efforts to prevent the breakup of the family,[551] and present testimony of a qualified expert witness[552] before placing an Indian child in foster care or terminating the parental rights of an Indian child. The Act also provides for increased burdens of proof.[553]

Most courts have interpreted ICWA to apply in conjunction with, and in some instances controlling, state child welfare laws.[554] When an Indian child is subject to a child custody proceeding, ICWA's protections and standards must be implemented by state court. Though ICWA is not a unique federal intrusion into state family dependence proceedings, it is one of the few laws that is not required to be incorporated into state law in order to receive federal funding. Many states have incorporated parts of the law while a few have passed comprehensive Indian child welfare acts.[555]

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544 *But see* JILL ELAINE HASDAY, FAMILY LAW REVISITED (2015) (arguing family law has long been the purview of the federal government *and* the states, despite Supreme Court dicta stating otherwise).
545 25 U.S.C. § 1903(1) (2012).
546 25 U.S.C. § 1903(4) (2012) (A child under the age of 18 who is either a tribal member or eligible for citizenship and the biological child of a member).
547 25 U.S.C. § 1912(a) (2012).
548 *Id.*
549 25 U.S.C. § 1911(c) (2012).
550 25 U.S.C. § 1911(b) (2012).
551 25 U.S.C. § 1912(d) (2012).
552 25 U.S.C. § 1912(e)-(f) (2012).
553 *Id.*
554 *See In re* K.S.D, 904 N.W.2d 479, 482 (N.D. 2017); *Valerie M. v. Ariz. Dept. of Economic Sec.*, 198 P.3d 1203, 1207 (Ariz. 2009) (collecting cases).
555 *See, e.g.*, Michigan Indian Family Preservation Act, MCL § 712B.1-41 (comprehensive state ICWA); Minnesota Indian Family Preservation Act, MINN. STAT. § 260.751-.835 (2023) (comprehensive state ICWA); Washington Indian Child Welfare Act, WASH. REV. CODE. § 13.38.010-.190 (2011) (comprehensive state ICWA); Nebraska Indian Child Welfare Act, NEB. REV. STAT. § 43-1501-1516 (2015) (comprehensive state ICWA); ARIZ. REV. STAT. § 8-453 (2014) (merely requiring compliance with ICWA); COLO. REV. STAT. § 19-1-126

To best serve the active practitioner this article first provides an overview of the case data, including information on where there were reported and unreported decisions interpreting ICWA, what provisions courts most commonly interpreted, and what themes arose in 2019. The article then provides a descriptive commentary on a handful of 2019 state and federal cases that best illuminate the described themes. It closes with a full compendium of 2019 cases which is topically organized for those practitioners who may not have access to this information.

III. SUMMARY OF THE DATA AND NATIONAL TRENDS

Every year there are usually around thirty reported state appellate court cases involving ICWA. However, until recently, there has never been a systematic look at the cases on appeal that includes an analysis of who is appealing and what the primary issues are. Legal databases make both published and unpublished cases more readily available to the practitioner and scholar, but the sheer volume of cases can be overwhelming. The authors of this article read every case as they were released through daily alerts from Westlaw, LexisNexis, and the Alaska court system. Each case was coded by the primary ICWA topic on appeal.[556] The cases were also coded with the date, the court, the child's named tribe,[557] who appealed, and what the court's ruling was[558] These numbers do not include federal challenges to the law, which are discussed separately below under Cases of Note.

Because of time limits and capacity, the ICWA topics on appeal are coded by one author. This means there are some cases

(2019) (requiring compliance with ICWA and specifically-inquiry, notification, determination, transfer to tribal court); OR. REV. STAT. § 419A.116, 419B.090, .118, .150, .171, .185, .192, .340, .365, .366, .452, .476, .498, .500, .875, .878, .923 (2019) (imbedding ICWA standards in relevant areas across Oregon's dependency code).

556 ICWA topics included: active efforts, burden of proof, qualified expert witness, inquiry, notice, transfer to tribal court, foster care proceeding, termination of parental rights, guardianship, Indian custodian, intervention, appealability, appointment of counsel.

557 In notice cases, there are often many tribes identified as potential tribes for the child. We collected up to three named tribes and put them in the order they appear in the case. We published the first named tribe here, unless the court determines the Indian child's tribe later in the opinion.

558 Rulings include affirm, remand, reverse, dismissed.

that cross topics and might be coded differently by a different reader. Therefore, the count of topics is not meant to be statistically sound, but rather provide a general guidance of the trends on appeal. The general elements of each topic are listed below:

Inquiry[559]: Opinions that primarily discuss social services or the court's failure to ask questions about or investigate a parent's claim they may be American Indian. This category may include cases where notice was sent without enough information, though should be limited to the issue being a lack of inquiry rather than incorrect notice.

Notice[560]: Opinions that primarily discuss the adequacy of notice to tribes. This includes notice that goes to the wrong tribe, goes to the wrong address, does not go to enough tribes, or was not updated with new information.

Foster Care Proceeding[561]: Opinions that primarily discuss what constitutes a foster care proceeding under ICWA's definition.

Removal[562]: Opinions that primarily discuss the evidentiary standards for the removal of a child from the home. These may include both emergency and non-emergency proceedings.

Improper Removal[563]: Opinions that primarily discuss the application of section 1920 of ICWA, requiring the return of the child to the parent if they were improperly removed.

Termination of Parental Rights[564]: Opinions that primarily discuss an element of an ICWA termination of parental rights, including active efforts, qualified expert witness, or the burden of proof.

Active Efforts[565]: Opinions that primarily discuss an active efforts finding in either a foster care or termination proceeding.

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559 25 U.S.C. § 1912(a) (2012); 25 C.F.R. § 23.107 (2016).
560 25 U.S.C. § 1912(a) (2012); 25 C.F.R. § 23.111 (2016).
561 25 U.S.C. § 1903(1) (2012); 25 C.F.R. § 23.103 (2016).
562 25 U.S.C. § 1912(e) (2012); 25 U.S.C. § 1922 (2012); 25 C.F.R. §§ 23.113-114 (2016).
563 25 U.S.C. § 1920 (2012).
564 25 U.S.C. § 1912(f) (2012); 25 C.F.R. §§ 23.120-23.123 (2016).
565 25 U.S.C. § 1912(e) - (f) (2012); 25 C.F.R. 23.2, § 23.120 (2016).

QEW[566]: Opinions that primarily discuss qualified expert witness testimony in either a foster care or termination proceeding.

Indian Child[567]: Opinions that primarily discuss a court's determination of whether the child is an Indian child under ICWA's definition—including whether there is "reason to know the child is an Indian child."

Placement Preferences[568]: Opinions that primarily discuss the placement order of one or more children.

Jurisdiction[569]: Opinions that primarily discuss a state court's determination that it has jurisdiction to hear the case.

Transfer to Tribal Court[570]: Opinions that primarily discuss an order either denying or granting a transfer of jurisdiction to tribal court.

Guardianship[571]: Opinions that primarily discuss a determination that ICWA applies to a guardianship.

Consent to Termination[572]: Opinions that primarily discuss an order terminating parental rights where arguments surround whether the parents' consented to the termination.

Interlocutory Appeal[573]: Opinions that primarily discuss a court determination that an order in an ICWA case is appealable.

Vacated Adoption[574]: Opinions that primarily discuss a parent's attempts to show fraud or duress to overturn a consent to adoption.

Ward of the Tribal Court[575]: Opinions that primarily discusses the court interpretation of whether a child is the ward of the tribal court for jurisdictional purposes.

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566 25 U.S.C. § 1912 (e) - (f) (2012); 25 C.F.R. § 23.122 (2016)
567 25 U.S.C. § 1903(4) (2012); 25 C.F.R. §§ 23.108-109 (2016).
568 25 U.S.C. § 1915 (2012); 25 C.F.R. §§ 23.129-132 (2016).
569 25 U.S.C. § 1911(2012); 25 C.F.R. § 23.110 (2016).
570 25 U.S.C. § 1911(2012); 25 C.F.R. §§ 23.115-119 (2016).
571 25 U.S.C. § 1903(1) (2012); 25 C.F.R. § 23.103 (2016).
572 25 U.S.C. § 1912(f) (2012); 25 U.S.C. § 1913 (2012); 25 C.F.R. § 23.124-128 (2016); 25 C.F.R. § 23.136-137 (2016).
573 25 U.S.C. § 1914 (2012).
574 25 U.S.C. § 1913(d) (2012).
575 25 U.S.C. § 1911(a) (2012).

Reason to Know[576]: Opinions that primarily discuss the threshold for whether there is a reason to know there is an Indian child involved in a child welfare proceeding.

Best Interest[577]: Opinions that primarily discuss the court's analysis of the best interest determination regarding an Indian child.

As we noted in 2017, in our first review of the data, the lack of reported ICWA cases understates the number of appeals, and also leaves important analysis and guidance as non-binding.[578] State courts of appeal interpret the law across the country at a rate of every other day. Each year, those courts hear around 200 appellate cases.[579] In 2017, there were 214 appealed ICWA cases. [580] Thirty-four were published.[581] In 2018, 206 ICWA cases were appealed, but forty-nine were published.[582] In 2019, there were 226 cases and forty-two were published. As these numbers illustrate, ICWA is litigated more often than non-practitioners might imagine.

In 2019, sixteen different states issued reported decisions this year, which means that at least compared to last year, many states had a few decisions, rather than a few states having many.[583] However, there were far fewer state Supreme Courts issuing

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576 25 U.S.C. § 1912(a) (2012).

577 MINN. STAT. § 260.755 subdiv. 2(a) (2015).

578 Kathryn Fort & Adrian Smith, *Indian Child Welfare Act Annual Case Law Update and Commentary*, 7 AM. INDIAN L. J. https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1198&context=ailj [https://perma.cc/RH44-XLAU]; *Matter of Dependency of K.S, Minor Child, State of Washington v. Frank.*, 199 Wash. App. 1034 (2017) (unpublished opinion); *New Jersey Div. of Child Protection and Permanency v. E.W.*, 2018 WL 3384284 (N.J. Ct. App. 2018) (discussing equal protection challenges to ICWA).

579 Data on file with the authors and journal.

580 Cases are collected from both Westlaw and Lexis over the course of the year via case alerts that collect cases from all fifty states and using the search terms "Indian Tribe", "American Indian", "Native American". The cases are sorted by case name, the date, the court, the state, whether the case is reported or not, the top two issues, up to three named tribes, the outcome of the case, and who appealed the case.

581 Data on file with the authors and journal.

582Fort & Smith, *Indian Child Welfare Act Annual Case Law Update and Commentary*, 6 AM. INDIAN L. J. 2 (2018), https://digitalcommons.law.seattleu.edu/ailj/vol6/iss2/2/ [https://perma.cc/JCN9-M8R7].

583 *See* last year's article at https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1198&context=ailj [https://perma.cc/929N-M89P].

decisions this year, and in the states that did have Supreme Court decisions, those states do not have intermediate appellate courts for their child welfare cases.[584] This year, Alaska had six reported decisions; Maine had three, Montana three, and South Dakota one. Meanwhile, Alaska had another seven unreported decisions, and Montana another one. The remaining opinions, published and unpublished, were authored by states' intermediate Courts of Appeal. The number of ICWA appellate cases varies significantly by jurisdiction, as does the number of cases which the courts choose to report.[585]

While unpublished opinions cannot be used for precedent, the authors include those cases in the numbers here to reflect the actual litigation practitioners encounter. As always, the authors have only summarized reported cases, but practitioners may want to keep in mind that unreported ones may still have significant legal research and reasoning useful to their cases. In addition, cases that are sometimes unpublished can later become published, or vice versa.[586] Previously we have speculated on the reasons why there may be so many unpublished decisions but have not yet landed on a conclusive answer. While most address the issue of inquiry and notice—an area so common and well-established that there may no longer be a need to report these opinions—there remain a number of unreported decisions addressing unique or unusual areas of the law.[587]

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584 It is important to note that Alaska, Montana, North Dakota and South Dakota do not have or use their court of appeals for child welfare cases; appeals are taken directly to the state supreme court. See Section III for a summary of these cases. That said, last year Montana only had two reported cases.

585 Yet again, California leads the states with 144 cases, but only two were reported. California always has both the greatest number of cases and one of the highest ratios of reported to unreported cases. Alaska is second with thirteen opinions and only six reported; followed by Texas with nine opinions and five reported. Michigan had seven opinions and did not report any of them, while Nebraska issued six opinions and published all six. Both Washington and Arizona issued five opinions and reported two, while Ohio issued five and reported three. New York and Montana each issued four opinions and reported three. Colorado, Maine, and Minnesota each issued three opinions. Indiana and New Jersey issued two, and Alabama, Arkansas, Illinois, Iowa, Kansas, West Virginia, Utah, South Dakota, Oregon, North Carolina, New Mexico each had only one decision apiece.

586 *See* In re A.M, 260 Cal.Rptr.3d 412 (Cal. Ct. App. 2019) (filed unpublished on March 5, 2020, partially published on April 2, 2020 in response to a request for partial publication by respondent).

587 *See e.g.* In re C.S. (Iowa Ct. App. 2019) (transfer to tribal court); In re S.B. (Minn. Ct. App.) (rev. denied) (constitutionality of ICWA and the Minnesota

Similar to last year, a majority of active efforts cases—nine out of fourteen—were unreported.[588] This may be a reflection of how fact specific most active efforts cases are. There is a drawback, however, because the courts continue with inconsistent determinations of what can be considered active efforts. Eleven of the active efforts cases were affirmed, but three were remanded, or affirmed in part and vacated in part.[589] Alaska continues to have the greatest number of active effort cases. While the 2016 federal regulations provided an itemized list of potential active efforts,[590] the question remains whether state courts are following them. In *Sam M. v. Dep't of Health & Human Services*, the Alaska Supreme Court nodded to the definition requiring the efforts to be "affirmative, active, thorough, and timely"[591] but affirmed the case. In *Bill S. v. Dep't of Health and Human Services*, discussed at length below, the Court engaged with the Regulations and remanded the case.[592] Similarly, in Montana, the Court engaged with the Regulations and the 2016 Guidelines and also remanded the case for lack of active efforts.[593]

The most litigated issues were notice and inquiry,[594] followed by active efforts, termination of parental rights (which includes burden of proof issues), qualified expert witness, a foster care proceeding, determination of an Indian child, reason to know, transfer to tribal court, and placement preferences.[595] Of all the cases, 108, or around fifty percent, were reversed or remanded.[596] Unlike last year, almost two thirds of the notice cases were remanded (58), and nearly 70% of the total inquiry cases were remanded (34). But of the total 42 reported cases, only thirteen were

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Indian Family Preservation Act); In re T.D. (Cal. Ct. App. 2019) (determination of Indian Child).

588 Data on file with the authors and journal.

589 Data on file with the authors and journal.

590 25 C.F.R. § 23.1 (2016).

591 Sam M. v. Dep't of Health & Soc. Servs., Office of Children's Servs., 422 P.3d 731, 736 (Alaska 2019).

592 Bill S. v. Dep't of Health & Soc. Serv., 436 P.3d 976, 981 (2019).

593 In re K.L, 397 Mont. 466, 449, 451 P.3d 518 (2019).

594 Notice (95), Inquiry (50)

595 Placement Preferences (5), Active Efforts (14), Termination of Parental Rights (12), Indian Child (7), Transfer to Tribal Court (6), and QEW (10)

596 Of the 226 total cases, 104 were remanded and four were reversed. In addition, eleven were dismissed for various reasons. Of the forty-two reported cases, twenty-six were affirmed, while thirteen were remanded or reversed, one was dismissed, and two were affirmed in part and reversed in part.

remanded or reversed and remanded. Finally, approximately eighty tribes were named as potential tribes in the cases.

Unlike last year, where no tribe appealed an ICWA case, there were six cases appealed by tribes this year, though Navajo Nation appealed four of them.[597] Notice to tribes of cases that go up on appeal remains a major issue for tribal practitioners, as are state appellate court rules that simply do not contemplate intervenor party briefs at the state appellate level. This is an area for advocates in states to focus on to ensure tribes do not have to choose between filing an amicus brief or attempting motion practice on appeal to protect their status as a party.[598] Filing as an amicus has considerable drawbacks, including limited page numbers,[599] and no way to ensure the clerks or judges read the briefs. This concern regarding amicus briefing versus principle party briefing one of the main reasons the four tribes intervened as parties in the *Brackeen v. Bernhardt* case. This intervention was to ensure there was a principal tribal brief on appeal, and to provide information to the court that could not be provided by the federal, state, and private parties to the case.[600]

There were also a number of cases addressing the jurisdictional transfer to tribal court. Last year was an outlier with only one transfer case on appeal. This year there were six. Of those cases, Navajo Nation appealed two of them, children's attorneys appealed two, and the parents appealed two. As usual, the appeals by the children's attorney was to avoid the transfer, and the courts were split on their outcomes.[601] Navajo Nation also had split results, with the Colorado Court of Appeals reversing the lower court and

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[597] In re Navajo Nation, 587 S.W.3d 883 (Tex. Ct. App. 2019); Navajo Nation v. Dept. of Child Safety, 441 P.3d 982 (Ariz. App. 2019); People in re L.R.B., __P.3d __, 2019 COA 85 (Colo. App. 2019); In re Y.J., 2019 WL 6904728 (Tex. Ct. App. Dec. 19, 2019).

[598] *See, e.g.*, Brief for Margaret Jacobs et al. as Amici Curiae Supporting Appellant; In re Dependency of Z.J.G. and M.G.; Minor Children v. Greer, 10 Wn.App.2d 4646 (2020) (No. 05-1631), https://www.courts.wa.gov/content/petitions/98003-9%20Central%20Council%20of%20the%20Tlingit%20and%20Haida%20Indian%20Tribes%20of%20Alaska%20Amicus%20Brief.pdf [https://perma.cc/VNF6-ZCF9].

[599] *Compare* WASH. R. APP. P. 13.4 *with* WASH. R. APP. P. 10.4.

[600] Brief in Support of Cherokee Nation, Oneida Nation, Quinault Indian Nation, and Morongo Band of Mission Indians' Motion to Intervene as Defendants, *Brackeen v. Zinke*, 338 F.Supp.3d 514 (N.D. Texas 2018) (No.17-cv-868).

[601] *In re* E.T., 2019 WL 1716407 (S.D. 2019); In re Dupree M., __ N.Y.S. 3d __ (2019).

ordering the transfer, and the Texas Court of Appeals affirming the lower court's denial of transfer.[602]

While this is only the third year the authors have written this annual review, they have been collecting data since 2015. This year they were able to merge five years of reported ICWA case law for some initial analysis. Unreported cases are still vital sources of court reasoning for ICWA but were not part of this initial merged data source or following numbers.

There have been 192 reported cases over five years (2015-2019). There was an average of thirty-eight reported cases per year, though 2018 was the highest with fifty-one. And while the cases that get the most media attention are those that involve the placement preferences, there have only been twelve of those cases over the past five years, and they have gone up on appeal equally from parents, foster parents, and tribes alike.[603] ICWA is used mostly on appeal by parents, not tribes or states. 158 of the 192 cases were appealed by parents—more than 80% of all the cases. This makes sense, given that only parents can truly appeal all aspects of ICWA cases, including inquiry and notice. If inquiry and notice have not been done properly, a tribe may never learn about the case. In addition, tribal appeals are not subsidized the way some states do for indigent parent appeals. As would be expected, tribes primarily appeal transfer to tribal court cases, and a handful of placement preference cases. As existential attacks on ICWA continue, many tribes consider how their actions of appealing could be used by opponents of ICWA.

As had been the case since 2015, parties continue to bring challenges to ICWA in the federal courts. Though the usual daily ICWA practice continues in state courts around the country, much of the media coverage and national legal work has focused extensively on cases out of Texas and Arizona. In particular, the facial challenge to the law by the states of Texas, Indiana, and Louisiana is the greatest threat to ICWA since its passage, though none of the arguments made in that case are new or were unconsidered by Congress and courts at the time of ICWA's

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602 *In re* L.R.B. 2019 COA 85, WL 2292327, (Colo. App. 2019); *In re* Navajo Nation, 587 S.W.3d 883 (Tex. App. 2019).

603 Five-year data on file with author and journal and were collected the same way as individual year sets. The five year set is an excel spreadsheet with sheets for each year, and a compiled reported cases sheet.

passage. Notably, these cases remain outliers, and their reasonings have not been adopted in any state court case. Rather, courts have been loath to make that determination.[604]

IV. CASES OF NOTE

The authors have chosen to highlight and summarize the cases below because they present relevant issues, reflect the trends noted above from across the country, and/or sit in a unique procedural posture that reflect the current challenges to, and interpretations of, ICWA described above. They address issues of jurisdiction, Indian child, qualified expert witnesses, and active efforts. A full listing of the forty-nine published cases are in section IV.

A. *Federal Cases*

Because ICWA is implemented in state court, federal cases involving the law are usually rare. However, due to a serious of affirmative attacks on the law in federal court, which started in 2015, there have been a number of published federal opinions over the past four years. This article includes published decisions from 2019, and notes when a case is currently under appeal.[605]

***Brackeen v. Bernhardt*, 937 F.3d 406 (2019) (vacated by en banc review) (for a full review of the district court opinion, see last year's summary) .[606]** After the district court found ICWA to be

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[604] *In re* Adoption of T.A.W., 11 Wn.App.2d 1031, 2019 WL 6318163; *In re* D.E.D.I, 568 S.W.3d 261 (Tex. App. 2019); *In re* Navajo Nation, 587 S.W.3d 883 (Tex. App. 2019); People *in re* E.T., 2019 SD 23, 932 N.W.2d 770; T.W. v. Shelby County Dep't of Human Resources, __ So.3d __, 2019 WL 1970066 (Ala. Civ. App. 2019). In addition, the Texas Court of Appeals also recently declined to address the constitutionality of the statute even when asked to do so directly. *In re* Y.J., 2019 WL 6904728 (Tex. App. 2019).

[605] The Ninth Circuit dismissed in an unpublished memorandum decision, Carter v. Tashuda, 743 Fed. Appx 823 (9th Cir.2018). Petition for writ of certiorari was then filed to the United States Court of Appeals for the Ninth Circuit and was denied.), Carter v. Sweeney, 139.Ct. 2637 (9th Cir. 2019), *cert. denied*.

[606] For a description of the district court decision, see Kathryn Fort & Adrian Smith, *Indian Child Welfare Act Annual Case Law Update and Commentary*, 7 AM. INDIAN L. J. https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1198&context=ailj 9 [https://perma.cc/29D9-F97Z]

unconstitutional,[607] the four intervenor tribes moved to stay the district court opinion in district court, pending appeal to the Fifth Circuit. The tribes pointed out that the decision is contrary to precedent on all grounds, including basic precepts of standing and mootness, federal Indian law, administrative law, and constitutional law. The tribes also noted the decision is specifically contrary to congressional intent and that the application of the decision would cause considerable confusion nationwide. The district court denied the stay, and the tribes both filed for a stay and appealed the decision to the Fifth Circuit. They were later joined in the appeal by the federal government and the Navajo Nation. The Fifth Circuit granted the stay.

Oral arguments in the Fifth Circuit were on March 13, 2019. The tribes were joined with over twenty state attorneys general in an amicus brief, as well as over 300 tribes, more than thirty child welfare organizations, and a plethora of constitutional, administrative, and Indian law professors all arguing the constitutionality of ICWA. On August 9, 2019, the Fifth Circuit overturned the district court on all issues.

On the issue of equal protection, the Fifth Circuit found that the district court wrongly interpreted *Morton v. Mancari*, 417 U.S. 535 (1974), specifically because *Mancari* is not based on the geographic location of the tribal citizens and that the definition of Indian child in the law is not race based, but rather citizenship based.[608]

In addition, the Fifth Circuit held that ICWA does not violate the anticommandeering doctrine and instead preempts conflicting state law, and the court held that where ICWA provides a minimum federal standard that is higher than state law, ICWA preempts that state law.[609] The Fifth Circuit reasoned that state courts are governed by the Supremacy Clause, and often have to enforce laws of other sovereigns. In addition, because the provisions of the law that apply to state agencies also apply to private parties—as in "any party" that places a child in foster care (which includes guardianships) or terminates parental rights (which includes step-parent adoption proceedings)—it does not violate the Tenth Amendment.[610]

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[607] Brackeen v. Bernhardt, 338 F.3d 514 (N.D. Texas 2018).
[608] 937 F.3d. at 426-27
[609] *Id*. at 430
[610] *Id*.

The Fifth Circuit also overturned the lower court's decision on 1915(a)—the section of ICWA that allows the Indian tribes to pass a resolution changing the placement preferences followed by state courts.[611] Agreeing with the tribal briefing, the court found that that provision is a part of inherent tribal powers and sovereignty. As explained by *U.S. v. Mazurie*, 419 U.S. 544 (1975), tribes have the ability to pass laws to regulate internal and social relations without running afoul of the nondelegation clause.

Finally, the court also found that the federal government had the authority to promulgate the 2016 ICWA regulations and did not violate the APA in doing so.[612] The Fifth Circuit found that, given that the government went through the standard notice and comment period and then addressed all of the comments in over 100 pages of front matter to the regulations, this is an unsurprising result.[613] In addition, the government addressed its own change in position regarding its authority in that front matter, which it is permitted to do when changing its opinion under agency law.[614]

A few days after the Fifth Circuit issued its majority opinion, Judge Owens issued a dissent.[615] Her dissent found that a few provisions of ICWA do violate the anticommandeering doctrine because those provisions could fall primarily on public state agencies. Specifically, her concerns centered on 25 U.S.C. 1912(d), (e), and 1915(e). The first two provisions include the requirements for a foster care placement and a termination of parental rights, including active efforts to rehabilitate the Indian family, and the qualified expert witness provision. The last section, and the accompanying regulation, require states to keep certain records regarding the placement of Native children.

On November 7, the Fifth Circuit voted to hear the case en banc. Oral arguments were held on January 22, 2020. In this Minnesota child dependency case two Indian children who lived on the Shakopee Mdewakanton Sioux Community (SMSC) were removed by a county police department after a medical clinic reported possible child abuse and neglect.[616] Pursuant to Minnesota Department of Human Services Indian Child Welfare Manual, the

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611 *Id.* at 436
612 *Id*. at 437-38
613 *Id.*
614 *Id.*
615 *Id*. at 441-46
616 Watso v. Lourey, 929 F.3d 1024, 1025 (8th Cir. 2019).

county officials contacted SMSC and the Tribe filed an ex parte motion in SMSC Court requesting legal and physical custody of the children.[617] Over the non-Native mother's objection, the tribal court took jurisdiction.[618] One child was a member of the SMSC tribe, and the other was a member of Red Lake Band of Chippewa Indians. Eventually Red Lake moved for the SMSC court to dismiss jurisdiction to allow the Tribe to assume jurisdiction over the member child's case.[619] Each court placed their respective member child in a guardianship with a family member.[620]

The mother and grandmother sued the Minnesota Department of Human Services, the County, the tribes, the courts, and the judges, arguing that the tribal court's assumption of jurisdiction violated their rights under ICWA, Public Law 280, and the federal constitution.[621] The District Court for Minnesota dismissed their case. The Eighth Circuit reviewed *de novo*.[622]

Specifically, mother and grandmother, citing to 25 U.S.C. § 1911(b),[623] argued that ICWA vests jurisdiction *first* with a state court, only after which can jurisdiction be transferred to a tribal court. [624] The Eighth Circuit dismissed this argument, because ICWA does not require a case begin with a state court proceeding, and section 1911(b) merely dictates the procedure for transfer when a state court proceeding has begun, which was not the case here.[625] Instead, the Court found:

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617 *Id.* at 1026.
618 *Id.*
619 *Id.*
620 *Id.*
621 *Id.*
622 *Id.*
623 25 U.S.C§ 1911(b) states in full:

> "In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe: Provided, That such transfer shall be subject to declination by the tribal court of such tribe."

624 *Id.*
625*Id.* The court also noted that the language of section 1911(b) does not apply to a state agency like the county police, but only to "state court proceedings. *Id.*

> ICWA "establishes exclusive jurisdiction in the tribal courts for proceedings concerning an Indian child 'who resides or is domiciled within the reservation of such tribe,' as well as for wards of tribal courts regardless of domicile." *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 36, 109 S.Ct. 1597, 104 L.Ed.2d 29 (1989), quoting 25 U.S.C. § 1911(a). It "creates concurrent but presumptively tribal jurisdiction in the case of children not domiciled on the reservation." *Id.*, citing 25 U.S.C. § 1911(b). There is no conflict between the Manual's requirement that local social service agencies refer child custody proceedings involving Indian children to tribal social service agencies for proceedings in tribal court, and the ICWA's recognition of exclusive or presumptive tribal jurisdiction for child custody proceedings involving Indian children.[626]

The court also dismissed arguments that tribal assumption of jurisdiction violated Public Law 280, noting that nothing in that law requires a state court proceeding or precludes concurrent jurisdiction under ICWA, and dismissed claims regarding the due process rights of the parent and grandparent, noting both received notice of tribal court proceedings, were heard in tribal court, and presented no evidence of other due process violations.[627]

Mother and grandmother petitioned for certiorari with the United State Supreme Court, and their petition was denied on March 2, 2019.

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626 *Watso*, 929 F.3d at 1027.

627 *Id.*

B. *State Cases*

***In re Shirley T.*, 199 A.3d 221 (Maine 2019).** In this child protection matter out of Maine, the mother, the aunt (who was the guardian) and the father, and the Tribe moved to transfer the case to the Oglala Sioux Tribe's court, which is located in South Dakota.[628] The state and child's attorney presented evidence of the extensive services and successful placement of the children in Maine which transfer would disrupt, as well as evidence of children's extensive connections and repeated child protection proceedings in Maine.[629] The trial court ultimately found by clear and convincing evidence that there was good cause to deny transfer to tribal court. Parents appealed arguing that the court erred as a matter of law by basing its finding on whether the tribal court would change the child's placement if transfer were granted.[630] To determine whether legal error occurred, the Supreme Court of Maine interpreted ICWA's transfer provision[631] *de novo* in light of the 2016 guidelines.[632]

The court found the plain language of ICWA's good cause provision ambiguous and then turned to the 2016 ICWA Guidelines to interpret its meaning, noting that they *prohibit* a finding of good cause based on "whether the Tribal court could change the child's placement."[633] Reviewing the 1979 Guidelines and noting that the BIA "declined the invitation" to list the distance between the state court and tribal court as a prohibited basis for a finding of good cause in the 2016 Guidelines, the court found that "[u]nlike placement considerations, evidentiary hardships imposed by a transfer of jurisdiction *are* an acceptable basis for a finding of good cause."[634] Based on this analysis, the court found that the tribal court denial of transfer was proper because:

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628 In re Children of Shirley T., 2019 ME 1, 199 A.3d 221).
629 In re Children of Shirley T., 2019 ME 1, ¶¶ 4-5, 199 A.3d 221, 222-223.
630 *Id.* at ¶¶ 17-18.
631 25 USC § 1911(b) (2012).
632 *Children of Shirley T.*, 2019 ME 1, ¶ 18, 199 A.3d 225221.
633 *Id*. (citing U.S. Department of the Interior, Bureau of Indian Affairs, Guidelines for Implementing the Indian Child Welfare Act (Dec. 2016)).
634 *Id.* at ¶¶ 22-23. The court also cited to ICWA's Legislative History which refers to the good cause determination in ICWA's transfer provision as a "modified *forum non conveniens* analysis." *Id*. at ¶ 24 (citing H.R. Rep. No. 95-1386 at 1 (1978)).

> "[a]lthough the court issued some findings that superficially appear to regard the children's placement—their desire to remain in Maine, their substantial contacts to Maine, and the preservation of the children's familial relationships in Maine—a more fulsome review of the record establishes that the court's focus was instead the difficulty in the presentation of evidence that would occur if jurisdiction were transferred."[635]

***In re Radiance K.*, 208 A.3d 380 (Maine 2019).** In this child protection matter out of Maine, the Department of Health and Human Services filed a petition to termination parental rights in late March of 2017.[636] The hearing was scheduled for late July 2017 but was continued and then rescheduled for December 4, 2017.[637] On November 28, 2017 Father filed a motion to transfer the case to the Penobscot National Tribal Court.[638] The tribe and the child's guardian ad litem objected.[639] The trial court found good cause to deny father's motion to transfer because the proceeding was at an advanced stage and father did not promptly request transfer after receiving notice of the action.[640] After a hearing on April 19, 2018 the court entered a judgment terminating parents' rights.[641] Mother and father filed timely notices of appeal and motions for relief with the trial court for ineffective assistance of counsel.[642] The Supreme Court granted a stay on the appeal to allow the trial court to act on the ineffective assistance of counsel motions.[643] Immediately thereafter, father filed another motion to transfer the case to the Penobscot Nation Trial Court. The trial court denied father's motion to transfer because he failed to seek leave from the Supreme Court

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635 *Id.* at ¶ 19.
636 *In re* Child of Radiance K., 2019 ME 73, ¶ 8, 208 A.3d 380, 384.
637 *Id.* at ¶¶ 9-10.
638 *Id.*
639 *Id.*
640 *Id.*
641 *Id.* at ¶ 12.
642 *Id.* at ¶¶ 14-15.
643 *Id.* at ¶ 15.

to take such an action.[644] Father appealed arguing that the tribal court erred when it denied each transfer motion. [645]

With regard to the pre-judgment motion to transfer, the court construed the transfer provision of ICWA[646] *de novo*.[647] Noting that ICWA itself does not define good cause the court turned to the 2016 Regulations which prohibit considering "[w]hether…the termination of the parental rights proceeding is at an advanced stage if the Indian child's parent… or tribe did not receive notice of the child-custody proceeding until an advanced stage" when making a finding of good cause to deny transfer and that the each sequential phase of a child custody proceeding is considered separately (i.e., the child protection case versus the termination of parental rights case are separate proceedings).[648] The Supreme Court, therefore found that the trial courts determination was proper because father had received proper notice and "[a]lthough the termination *hearing* had not begun when father filed the motion, the termination *proceeding* began… almost eight months before father filed the motion," making his motion untimely. [649] [650] With regard to the post-judgment motion to transfer, the court found that Maine Rules of appellate procedure did not authorize the trial court to adjudicate the father's motion where his motion to stay only requested leave for the trial court to act on post-trial matters that did not encompass the motion to transfer.[651] On this basis the trial court Order was affirmed.

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[644] *Id.*

[645] *Id.* at ¶22. Note the parents also appealed and lost on various other issues including whether the state provided active efforts and whether the state proved mother's unfitness, and ineffective assistance of counsel. *Id.* at ¶¶ 25-35, ¶¶ 48-61. Those arguments and the courts conclusions are, for the purposes of this article, unremarkable and therefore not summarized here.

[646] 25 USC 1911(b).

[647] *Child of Radiance K.*, 2019 ME 73, ¶ 37, 208 A.3d 380.

[648] *Id*. at ¶ 39 (citing to 25 C.F.R. §23.118(c)(1)). Like *In re Shirley,* the *Radiance* court also notes that "Congress intended for the transfer requirement and the exemptions to permit state courts to exercise case-by-case discretion regarding the 'good cause' finding" similar to a "modified" version of the *forum non conveniens* analysis. *Id*. (citing to 81 Fed. Reg. 38,778, 38,821, 38,825 (June 14, 2016)).

[649] *Id*.

[650] The authors note that because the tribe filed a motion objecting to transfer the case court could have affirmed the court's decision on this alternative ground, as ICWA prohibits transfer when a trial court declines transfer. See 25 U.S.C. § 1911(b).

[651] *Id.* at ¶ 48. Authors note that no pre-emption arguments were made by father's counsel and in other states and topical areas ICWA has been found to

***In re L.R.B.*, __ P.3d __, 2019 COA 85 (Colo. Ct. App. 2019)**. In this case out of Colorado following the termination of parental rights proceeding the Indian child's tribe, Navajo Nation, moved to transfer the case to tribal court for the purposes of presiding over the pre-adoptive placement and adoption proceedings.[652] The Department of Social Services and the guardian ad litem stipulated to the transfer.[653] After the termination proceeding, at the Department's request, the court granted a motion moving the children from the former foster parents' home to an ICWA preferred placement.[654] Nonetheless, the former foster parents, who after filling motions to adopt the children over the objection of Navajo Nation and the Department, were re-joined to the termination case, objected to the transfer of the case to Navajo Nation's court.[655] The trial court denied the motion to transfer concluding: "the plain language of [ICWA's transfer provisions section 1911(b)] does not apply to preadoptive and adoptive placement proceedings, and even if it did apply, the former foster parents presented evidence of good cause to deny the request."[656] The Tribe appealed.

The Court of Appeals found both that the former foster parents lacked standing to oppose the motion to transfer and that the trial court erred when it denied the motion to transfer.[657] As it is a matter of law, the court reviewed the issue of standing *de novo*.[658] The court found that under state juvenile statutes, foster parents only have intervenor status if a child is in their care for more than three months and they possess information or knowledge concerning the

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preempt state Rules of Appellate Procedure. *See, e.g.,* Dep't of Human Services v. J.G.,317 P.3d 936 (Oregon Ct. App. 2014).

652 People in Interest of L.R.B., No. 18CA1478, 2019 COA 85WL 2292327, at *1. (Colo. App. May 30, 2019). (BB Rule 10.8.1(a) – unpublished opinions). Navajo Nation initially moved to transfer jurisdiction during the pendency of the termination's appeal, that motion was denied because the trial court lacked jurisdiction to act on the case while it was up on appeal. Navajo Nation entered a new motion after the court denied parents' termination appeal. *Id*. at 2.

653 *Id.*

654 *Id.* at 2.

655 *Id.*

656 *Id.* at 1.

657 *Id.* at 5. The Court of Appeals first found that under the collateral order doctrine a court order denying a motion to transfer is an interlocutory order that may be immediately appealed because the order "conclusively determined" the disputed issue, resolved "an important issue completely separate from the merits," and was "effectively unreviewable on appeal." *Id.* at 4.

658 *Id.* at 5.

care and protection of the child.[659] Because the children were transferred out of the care of the foster parents post-termination and because the general Colorado Rules of Civil Procedure do not apply when there is a juvenile statute on point, the court found that they lacked intervenor status.[660] With regard to the trial court's decision to deny the motion to transfer the Court of Appeals found that under ICWA's transfer provision preadoptive and adoptive placements are not included,[661] but that Colorado law at the time of the proceeding[662] permits transfer in any of the cases identified in in subsection (1) of § 19-1-126 of the Children's Code where subsection (1) included "pre-adoptive and adoptive proceedings." [663] The Court of Appeals then noted under the Children's Code, the party opposing transfer bears the burden of proof for establishing good cause.[664] Thus, although the court found that had the transfer provisions applied because there was sufficient evidence presented by the former foster parents to establish good cause to deny transfer, as the foster parents lacked standing to present that evidence and the burden was not met.[665] On these basis the trial court order was reversed.

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[659] *Id.* (citing to COLO. REV. STAT. § 9-3-507(5)(a) (2018)).
[660] *Id.* at 5-6. The court also noted that law former foster parents do not enjoy a constitutionally protected liberty interest in the relationship with their child. *Id.* at 5.
[661] Section 1911 (b) states:

> In any state court proceeding for the *foster care placement of, or termination of parental rights to*, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe. Provided that such transfer shall be subject to declination by the tribal court of such tribe.

(emphasis added). Note the 2016 Guidelines state in relevant part "Provisions addressing transfer apply to both involuntary and voluntary foster care proceedings and TPR proceedings. This includes TPR proceedings that may be handled concurrently with adoptive proceedings." Department of the Interior, Bureau of Indian Affairs, 2016 ICWA Guidelines, 47.
[662] The court notes that during the pendency of the appeal Colorado Children's Codes ICWA implementing provisions were updated to conform with the federal ICWA regulations. *Id.* (citing to H.B. 1232, 72nd Gen. Assemb., 1st Reg. Sess. (Colo. 2019)).
[663] *Id.* at 6 (citing to COLO. REV. STAT. §§ 19-1-126 (1) & (4)(a) (2018)).
[664] *Id.* at 6 (citing to COLO. REV. STAT. § 19-1-126 (4)(b) (2018)).
[665] *Id.* at 6.

***State ex rel. Children, Youth & Families Dep't v. Tanisha G.*, 451 P.3d 86, 2019 NMCA 067 (N.M. Ct. App. 2019).** In this New Mexico abuse and neglect case, the day after the child's removal,[666] the father when questioned by the court testified that his mother was "Navajo-Apache," that his maternal grandmother was "full" and his maternal grandfather was "half."[667] On that basis, the court determined that there was "reason to know" that the child was an "Indian child" and that ICWA applied to the case.[668] The court ordered:

> [b]ecause there is reason to know [C]hild meets the definition of Indian child as set forth in ICWA, the [c]ourt shall treat [C]hild as an Indian child subject to [ICWA] unless and until it is determined on the record that [C]hild does not meet the definition of Indian child under applicable law.[669]

The Children, Youth and Families Department stated that it would "abide by" this ICWA finding.[670] On February 8, 2018, the Department sent notice to the tribe.[671]A status conference was held on February 27, 2018 and although adjudicatory hearings were set on April 2 and 24, 2018, they were not commenced because the Department failed to file proof of service to the tribe.[672] At the April 24 hearing the Department argued that the child was not an "Indian child" under the act.[673] To support this claim the Department offered proof of an investigator's attempt to speak with the child's grandmother.[674] On April 25, 2018, 77 days after the petition was filed, the parents filed a motion to dismiss because the Department failed to commence the adjudicatory proceeding within 60 days as

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666 The child was removed by law enforcement when they came to arrest the father and left the child without a caregiver. The arrest was a case of mistaken identity. State ex rel. Children, Youth & Families Department v. Tanisha G., 2019 -NMCA- 067, 451 P.3d 86, 88.

667 *Id.*

668 *Id.*

669 *Id.*

670 *Id.*

671 *Id.*

672 *Id.*

673 *Id.*

674 *Id.*

statutorily required.[675] At a May 24, 2018, hearing the Department again claimed that the child was not an "Indian child" but offered no proof of this determination and requested an extension of time to commence the hearing.[676] The motion to dismiss was granted and the Department appealed claiming that the trial court erred in applying ICWA and by denying the Departments motion for an extension of time.[677]

The Court of Appeals found that both of the Departments challenges to the application of ICWA were procedurally deficient because they came after the 60-day adjudication deadline—thus requiring notice of services and application of ICWA at the adjudication was appropriate.[678] It also found that the offer of proof at the April 24 hearing and the lack of proof at the May 24 hearing were insufficient to meet the burden set forth in the ICWA regulations:

> [c]onform by way of report, declaration, or testimony included in the record that [the Department] or other party used due diligence to identify and work with all tribes of which there is a reason to know the child may be a member (or eligible for membership), to verify whether the child is in fact a member (or a biological parent is a member and the child is eligible for membership)[.][679]

Thus, the application of ICWA to the case was appropriate.[680] Based on the correct application of ICWA and the interpretation of state law the court also found that the court did not err when it denied the department's motion for an extension of time and dismissed the case with prejudice.[681]

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675 *Id.*
676 *Id.*
677 *Id.*
678 *Id.* at 89.
679 *Id*. at 89 (citing to 25 C.F.R. § 23.17107(b)(1) (2016)).
680 *Id.*
681 *Id.* at 89-90. As this issue is not relevant to ICWA the court's analysis under New Mexico's statutes providing for timely adjudications is not provided in detail here.

***Oliver N. v. Dep't of Health and Human Services*, 444 P.3d 171 (Alaska 2019).** In this consolidated Alaska case, the mother and father of two Indian children in two different families had their rights terminated.[682] In one case, the ICWA qualified expert testimony was provided by the president, chairman of the board and chief executive officers of Ninilchik Native Association and president of Ninilchik Village Tribe. [683] He had no formal college education or training in childhood trauma or mental health but testified that he had "seen plenty of it," "worked with a lot of… cases" and been through mental health classes with the tribe.[684] The trial court ultimately found that although this witness neither a social worker nor a mental health expert he was "highly qualified to speak to the cultural norms" of the tribe and terminated Father's parental rights.[685] In the other case, the ICWA qualified expert was a member of the Orutsararmiut Tribe, held a bachelor's degree in social work, had served as a Department ICWA Worker for two years, had previously been a protective services specialist, received ICWA training, and was previously certified as an ICWA expert by an Anchorage Superior Court.[686] The court did "not believe that [she] was the best expert" but accepted her testimony to make the necessary findings to terminate Mother's parental rights.[687] Parents appealed arguing that under the ICWA Regulations neither individual qualified as an ICWA expert witness.[688]

The court began by acknowledging that under the 2015 ICWA Guidelines the experts in each case would have been presumptively qualified, but that the new ICWA Regulations superseded them.[689] The court then found that "[t]he 2016 regulations and the accompanying commentary indicate that the primary consideration in determining whether an expert is qualified under ICWA is the expert's ability to speak to the likelihood of harm to the child if returned to the parent's custody; knowledge of tribal customs and standards is preferred, but such knowledge alone is

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682 Oliver N. v. Dep't of Health & Social Services, 444 P.3d 171, 175-76.
683 *Id.* at 175.
684 *Id.* at 176.
685 *Id.*
686 *Id.* at 176.
687 *Id.* at 177.
688 *Id.*
689 *Id.*

insufficient."[690] The court did note that a "tribal expert does not need to be qualified to speak to the likelihood of harm to the child if there is a second qualified expert who can, but in proceedings involving only one expert, ICWA requires that the expert meet the [full] qualifications."

The court finding the expert's testimony on tribal customs and values "welcomed and beneficial", ultimately found that because they were the only experts to testify in each case and because they lacked qualifications to testify as to whether returning the child to the parent's case as likely to cause serious emotion or physical damage to the child, the standard under the ICWA Regulations was not met.[691] For those reasons the Supreme Court reversed the orders terminating the parent's rights.[692]

***Bill S. v. Dep't of Health and Human Services*, 436 P.3d 976 (Alaska 2019)**. In this Alaska case the trial court terminated the parental rights of two Indian children after the children spent two years in the custody of Office of Child's Services and in foster care.[693] The children were removed August 2015.[694] At the

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[690] *Id.* at 179. Specifically, the court reasoned:

> 25 C.F.R. § 23.122(a) and the new guidelines 'recognize[d] the difference between the mandatory word `must' and the admonitory word 'should': the ability to testify about the risk of harm is required of every qualified expert witness, but the ability to testify about 'the prevailing social and cultural standards' is not essential in every case.' We acknowledged that the new regulations require an expert witness be qualified to testify to the relevant causal relationship — 'whether the child's continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.' Connecting the new regulations to the guidelines and our precedent, we stated that '[t]he expert witness who is qualified to draw this causal connection must have an 'expertise beyond normal social worker qualifications.'

Id. at 177-78.

[691] *Id.* at 179-80. The court also noted that although the expert in the Mother's case had worked for the Department, her qualifications were not greater than a "normal social worker" as also required by the regulations. *Id.* at 179 ("in every case in which we found an expert to be clearly qualified the expert 'had substantial education in social work or psychology and direct experience with counseling, therapy, or conducting psychological assessments[.]").

[692] *Id.*

[693] Bill S. v. Dep't of Health and Human Services, 436 P.3d 976, 981.

[694] *Id.* at 978.

February 2016 adjudicatory hearing, the trial court issued a warning to the Office stating that "it did not see a whole lot of active efforts" and was "not all that impressed with the quality of efforts [provided]," ultimately finding "by the slimmest of margins" the Office had made active efforts but that "this is as little over the line of active efforts as you can get while crossing the line."[695] The trial court also warned mother that if she didn't improve her efforts to engage it was "entirely likely" that her parental rights would be terminated.[696]

At the termination trial, the trial court expressed serious doubt about the Office's case stating that it was "underwhelmed by the quality of testimony… offered about the efforts that [the Office] had made to help parents[,]" that there was "very little detail about when those efforts were made[,]" and "only vague descriptions of what the tribal authorities had done."[697] Nonetheless, the trial court terminated parental rights finding that the Office had met its active efforts burden "due in large part to 'the consideration the Court is to give to the parents' demonstration of an unwillingness to change or participate in rehabilitative efforts" and that parents denied that they had problems with alcohol and domestic violence, declined treatment, and refused to engage in classes or counseling.[698] Parents appealed arguing that the evidence of active efforts was too "vague" and "over generalized" to demonstrate active efforts by clear and convincing evidence.[699]

The Supreme Court reviewed whether the trial courts' findings satisfied the active efforts requirements of ICWA *de novo* as it is a question of law.[700] The Supreme Court describing the law related to active efforts, stated that the 2016 Regulations set a nationwide definition reaffirming that they must not only be "affirmative, active, thorough, and timely" but tailored to "the

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[695] *Id.* at 978.

[696] *Id.*

[697] *Id.* at 980. Notably the court also stated:

> Recognizing the difficulty of remotely supervising the efforts of [the Office] in St. Paul [an Island in the Bering Sea] and the 'limited services' available on the island, the court noted it is therefore 'particularly important that the witness [for the Office] has researched [the Office] records and thus [is] prepared to describes the services that were offered.

[698] *Id.*

[699] *Id.* at 981.

[700] *Id.* at 981.

circumstances of the case."[701] The Supreme Court also concluded that under the 2016 Regulations, active efforts "must be documented in detail in the record,"[702] stating "[t]he act of documentation is not itself an 'active effort'; rather, it is a mechanism for OCS and the court to ensure that active efforts have been made. Documentation is required by ICWA and critical to compliance with ICWA's purpose and key protections."[703]

On those bases, the Supreme Court then found that the record was simply insufficient to show that the Office made active efforts, finding that the caseworker's testimony throughout the termination trial was "riddled" with "generic statements that defer to the tribe's actions without documentation or testimony about when and in what context the efforts occurred.[704] It also found that documentation of active efforts in the record was "woefully missing."[705] The court concluded:

> "We acknowledge that the superior court concluded that [the Office] met its burden due in large part to 'the consideration the Court is to give to the parents' demonstration of an unwillingness to change or participate in rehabilitative efforts.' While this principle remains valid, the parents' lack of effort does not excuse [the Office's] failure to make and demonstrate its efforts."[706]

Accordingly, the court reversed the termination of parental rights and remanded the proceeding.[707]

***In re Adoption of K.L.J.*, 831 S.E.2d 114 (N.C. Ct. App. 2019).** In this North Carolina case, the Cheyenne River Sioux tribal court initially took jurisdiction and granted Aunt custody of the

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[701] *Id.* (citing to C.F.R. §23.2)
[702] *Id.*
[703] *Id.* at 983.
[704] *Id.* at 982.
[705] *Id.* at 983.
[706] *Id.* at 983.
[707] *Id.* at 984.

children.[708] Shortly thereafter, the Aunt entered into a Temporary Guardianship Agreement with guardians in state court.[709] Two years later, the guardians filed petitions to adopt children in state court.[710] Two months later the Aunt was served notice of the petition and immediate moved to vacate the guardianship order and have the children returned to her care pursuant to the tribal court custody order.[711] The clerk denied her motion and transferred the case to district court to determine whether North Carolina had jurisdiction over the adoption.[712] The record of the June 16, 2016 hearing included a faxed copy of an Order of Jurisdiction issued by the tribal court on May 2, 2016, stating that the Aunt as an Indian custodian as defined by ICWA, that the children were wards of the tribal court until they were 18 years old, and that pursuant to ICWA the tribe has exclusive jurisdiction.[713] This document was never entered into evidence.[714] At the conclusion of the hearing court concluded that it had jurisdiction and entered the children's decrees of adoption.[715] Aunt appealed arguing that the state court lacked jurisdiction over the adoption proceeding and that the court erred when it failed to give full faith and credit to the tribal order that determined that Aunt was an Indian custodian under ICWA and entitled to the children's return.[716]

The Court of Appeals reviewed the issue of subject matter jurisdiction *de novo*. The Court of Appeals noted that under the relevant provision in ICWA, a tribe has exclusive jurisdiction when an Indian child is a ward of the tribal court.[717] Turning to the Black Law Dictionary definition of ward the court found that term means either a person "who is under a guardian's charge or protection" or a ward of the state is "someone who is housed by, and receives protection and necessities from the government."[718] The court then concluded that because there was no evidence that the tribe ever

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[708] In re Adoption of K.L.J. & K.P.J., 831 S.E.2d 114, 115. (N.C. Ct. App. 2019).
[709] *Id.*
[710] *Id.* at 116.
[711] *Id.*
[712] *Id.*
[713] *Id.*
[714] *Id.*
[715] *Id.*
[716] *Id.*
[717] *Id.* at 117 (citing to 25 U.S.C. § 1911(a)).
[718] *Id.* at 117.

housed or provided protection or necessities for the children they were never a ward of the tribal court.[719] Further, state jurisdiction was appropriate despite the tribal Jurisdiction Order asserting wardship and jurisdiction because as described below, the trial court was not required to offer that order full faith and credit. *Id.*

Under ICWA, the state "shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity."[720] Based on this mandate, the Court of Appeals turned to its caselaw regarding foreign judgments and the Uniform Enforcement of Foreign Judgments Act to determine whether the Tribal Jurisdiction Order finding Aunt to be an Indian custodian[721] was to have been honored.[722] Nothing that the UEFJA requires the party seeking to enforce a foreign judgment must "file a properly authenticated foreign judgment with the office of the [C]lerk of [S]uperior [C]ourt in any North Carolina county" the court found that no such document was presented to the court and the only copy of the court order in the record was never entered into evidence.[723] The Court of Appeals also found that under state caselaw full faith and credit need not be offered in instances like this one, where there is no assurance that the order was issued in compliance with basic tenants of due process.[724] Specifically, the Court of Appeals took issue with the fact that no party besides the Aunt was given notice of the proceeding or an opportunity to be heard before the Tribal Jurisdiction Order was entered.[725] On this basis the Court of Appeals affirmed the trial court decree of adoption.

***In re Dupree M.*, 171 A.D.3d 752 (N.Y. Ct. App. 2019).** In this New York case, a petition alleging neglect involving an Indian child was filed against mother.[726] Over the child's objection, mother and the Unkechaug Indian Nation, a state recognized Indian tribe,

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[719] *Id.*
[720] 25 U.S.C. § 1911(d).
[721] Under ICWA Indian custodians are given rights and protections similar to parents. See, e.g., 25 U.S.C. §§ 1912, 1913, 1914, &1916.
[722] *Id.* at 118.
[723] *Id.* (citing to N.C.G.S. § 1C-1703(a) (2017)).
[724] *Id.*
[725] *Id.*
[726] Matter of Dupree M. [Samantha Q.], 171 A.D.3d 752, 97 N.Y.S.3d 680.

requested transfer to tribal court.[727] The court granted the motion and the case as transferred to tribal court.[728] The child's attorney appealed, arguing that because the proceeding did not result in a foster care placement, transfer was not appropriate under ICWA.

The Supreme Court[729] first confirmed that under New York State law the rights and protections of ICWA extend to tribes who are recognized by the state of New York such as the Unkechaug Indian Nation.[730] The court then turned to whether transfer to tribal court was appropriate. It began its analysis by reminding that under ICWA "state-court proceedings for foster care placement or termination of parental rights are to be transferred to the tribal court, except in cases of 'good cause,' objection by either parent, or declination of jurisdiction,"[731] and citing New York law that restates the transfer provisions of ICWA.[732] Then citing to the authority of the Bureau of Indian Affairs to promulgate regulations, the court found that the definition of a child custody proceeding related to a foster care placement included in the 2016 Regulations includes "any action that may culminate in" a foster care placement.[733] The court therefore found that transfer was proper because although the hearing in question did not result in a foster care placement it "may have culminated in one" and was therefore a child custody proceeding under ICWA making transfer appropriate.[734]

***In re L.L.*, 454 P.3d 51 (Utah Ct. App. 2019).** In this protective services case the child was removed from mother's care and custody and shortly thereafter returned with an in-home services plan.[735]As part of the in-home services plan mother came into contact with three therapists, each of whom wrote a letter to the juvenile court expressing concern about the child's safety in the home.[736] The guardian ad litem for the child moved the court to

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[727] *Id.* at 752-53.
[728] *Id.*
[729] In New York the intermediate appellate court is called the Supreme Court.
[730] *Id.* at 573.
[731] *Id.* at 574 (citing to Mississippi Band of Choctaw Indians v. Holyfield, 490 US 30, 36 (1989)).
[732] *Id.* at 575 (citing to Social Services Law § 39 (6)).
[733] *Id.* at 754 (citing to 25 C.F.R. 23.2 *Child Custody Proceeding* (2)).
[734]*Id.* at 575. Notably the child also argued that because the New York State ICWA regulations were not updated until one month after the proceeding in question.
[735] State in Interest of L.L., 2019 UT App 134, 454 P.3d 51, 54. (Utah Ct. App. 2019).
[736] *Id.* at 55.

again place the child in the Department's custody.[737] In preparation for the adjudication the GAL designated the three therapists who had filed letters with the court as qualified expert witnesses for the purposes of ICWA.[738] The Department and mother moved to strike the GAL's motion on the basis that she had failed to designate an expert who was qualified under ICWA.[739] The trial court found that the "*Chevron* deference rule" required it to deter to and adopt the 2016 ICWA Regulation's interpretation of the term qualified expert witness and that the definition in the regulations precluded the court from qualifying any of the therapists as an expert under ICWA because none of the them could speak to the prevailing social and cultural standards of the Tribe.[740] The court then closed the child's case and the GAL appealed.[741]

The Court of Appeals began by finding that recent Utah case law affirmed that Utah courts "must still defer to a *federal* administrative agency's interpretation of an ambiguous *federal* statute" and that the court did not err when it determined that the 2016 ICWA regulations were binding.[742] Employing the *Chevron* deference test the Court found that the addition of the word "qualified" made the term qualified expert witness an ambiguous one; that 25 U.S.C. § 1952 expressly granted the Bureau of Indian Affairs authority to promulgate regulations; and that the definition of "qualified expert witness" provided in those regulations is a permissible construction of the term as a stated purposes of ICWA was to overcome the fact that "states… have often failed to recognize … the cultural and social standards prevailing in Indian communities and families" and an custody concerns may be different in the context of an Indian family.[743]

The Court then went on to determine that under that when a qualified expert witness is required the regulations state that:

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737 *Id.*
738 *Id.*
739 *Id*.
740 *Id.* (citing to Chevron, U.S.A., Inc v Natural Res. Def. Council, Inc., 467 U.S. 837, 843-45, 104 S. Ct. 2778, (1984) and 25 C.F.R. § 23.122(a) (2017)).
741 *Id*.
742 *Id.* at 58 (citing to Bank of Am., NA v. Sundquist, 2018 UT 58, 430 P.3d 623 (2019)).
743 *Id.* at 60 (citing to 25 U.S.C. § 1901 (5) (2011)).

> "while a 'qualified expert witness *must be* qualified to testify regarding whether the child's continued custody by the parent … is likely to result in serious emotional or physical damage to the child,' the witness "*should be* qualified to testify as to the prevailing social and cultural standards of the Indian child's tribe." The second part of the definition, pertaining to the witness's qualification to testify regarding tribal social and cultural standards… grants the state courts discretion to determine whether this type of qualification is "necessary in any particular case."[744]

Finding support in this interpretation in the commentary of the 2016 ICWA regulations the court determined that it might "generally" be important for a qualified expert witness to have knowledge of tribal social and cultural standards a court may determine that that such specialized knowledge is "plainly irrelevant" to particular circumstances at issue or that a case may not be influence by cultural bias and therefore deem an expert qualified to testify as to whether continued custody of the parent would result in serious emotional or physical damage to the child.[745] For this reason the Supreme Court determined that the trial court erred in dismissing the case without considering "whether this as the sort of case in which claimed reasons for removal were unrelated to tribal custom or culture."[746] On this basis and other unrelated basis the court reversed the trial court's decision.[747]

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[744] *Id.* (citations omitted)
[745] *Id.* at 61.
[746] *Id.* at 62.
[747] Note the GAL also challenged a trial court ruling that the mother's communication with her therapist were privileged, as that argument is not relevant to ICWA it is not included here, although it was another basis for reversal. *Id.* at 63.

V. ALL REPORTED STATE CASES

As a federal law implemented by state courts, ICWA holds a unique place child welfare jurisprudence. Included below is a comprehensive listing of all reported 2018 state and federal cases involving the Indian Child Welfare Act. This quick reference should allow busy practitioners the opportunity to quickly find and review all new case law on any given ICWA topic that may arise in their caseload without the tedious work of searching through 50 jurisdictions and numerous topics.

Cases that were not reported, and that were reported but only mention ICWA to clarify that the child involved was not ICWA-eligible have not been included.

Case Name	Date	Year	Court	State	Reported	Tribe	Outcome	Party Appealing
Active Efforts								
In re Mercedes L.	15-Jan	2019	COA	NB	Rep.	Oglala Sioux	Affirmed in part, Vacated in part	Mother
Bill S. v. Dept. of Health & Social Services	15-Feb	2019	SC	AK	Rep.	Aleut Community of St. Paul Island	Remand	Mother and Father
Sam M. v. State of Alaska	7-Jun	2019	SC	AK	Rep.	Native Village of Kluti-Kaah	Affirm	Father
In re I.C.	9-Oct	2019	COA	OR	Rep.	Confederated Tribes of the Siletz Indians	Affirm	Father

Matter of K.L.	29-Oct	2019	SC	MT	Rep.	Little Shell Tribe of Chippewa Indians	Remand	Father
In re Aviyanah S.	15-Jan	2019	COA	NB	Un	Rosebud Sioux Tribe	Affirm	Father
Alfred J. v. State of Alaska Dept of Health and Social Services	3-Apr	2019	SC	AK	Un	Unnamed	Affirm	Father
Charlotte K. v. Dept. of Health and Social Services	19-Jun	2019	SC	AK	Un	Unnamed	Affirm	Mother
A.B. v. Superior Court of Inyo Co.	3-Jul	2019	4th Dist.	CA	Un	Unnamed	Affirm	Mother
Addy S. v. Dept of Health and Social Services	17-Jul	2019	SC	AK	Un	Chevak	Affirm	Mother
In re S.M.	30-Jul	2019	1st Dist.	CA	Un	Round Valley Tribe	Affirm	Mother
In re E.D.	24-Sep	2019	3rd Dist.	CA	Un	Cherokee Nation	Affirm	Mother and Father
In re I.R. Hugo	17-Dec	2019	COA	MI	Un	Sault Ste. Marie Tribe	Affirm	Father

Tim B. v. State	18-Dec	2019	SC	AK	Un	Native Village of Stevens	Affirm	Father
Application of ICWA								
In re L.M.	22-Feb	2019	COA	OH	Rep.	Unnamed	Affirm	Mother, Grandmother, Great Aunt
In re C.E.	4-Nov	2019	4th Dist.	CA	Un	Navajo Nation	Affirm	Mother
Child Custody/Foster Care Proceeding								
In re Welfare of AP	24-Jun	2019	COA	MN	Un	Bad River Band	Affirm	Grandmother
In re Leslie T. Jr.	1-May	2019	COA	NY	Rep.	Unkechaug Indian Tribe	Affirm	Tribe
In re S.B.	9-Dec	2019	COA	MN	Un	White Earth	Affirm	Foster Parents
In re Z.T.	19-Feb	2019	2nd Dist.	CA	Un	Cherokee	Affirm	Mother
In re L.R.	12-Apr	2019	2nd Dist.	CA	Un	Apache	Dismissed as Moot	Mother
In re Melody. R.	16-May	2019	2nd Dist.	CA	Un	Cherokee	Dismiss as Moot	Mother
In re K.C.	10-Jun	2019	3rd Dist.	CA	Un	Unnamed	Affirm	Mother

In re Gabriel D.	20-Jun	2019	2nd Dist.	CA	Un	Apache	Remand	Father
In re I.T.	28-Aug	2019	6th. Dist.	CA	Un	Cherokee	Affirm	Mother
In re Acevedo	22-Oct	2019	COA	WA	Un	Unnamed	Remand	Mother
In re Elijah G.	22-Oct	2019	2nd Dist.	CA	Un	Creek	Affirm	Mother
In re A.L.C.	23-Jan	2019	COA	WA	Rep.	Samish	Remand	Father
Indian Child								
In re S.K.	23-Dec	2019	COA	IN	Rep.	Lac Des Mille Lacs	Affirm	Father
In re Louis W.	15-Jan	2019	COA	NB	Un	Navajo Nation	Affirm	Mother and Father
In re M.B.B.	22-Apr	2019	COA	MN	Un	White Mountain Apache	Affirm	Mother
In re S.R.	21-May	2019	2nd Dist.	CA	Un	Unnamed	Dismiss as Moot	Father
In re Baby Boy W.	26-Jun	2019	COA	NY	Un	Unnamed	Affirm	Mother
Gregory R. v. Dept of Child Safety	24-Dec	2019	COA	AZ	Un	Unnamed	Affirm	Father

In re T.D.	18-Dec	2019	4th Dist.	CA	Un	Chickasaw Nation	Affirm	Father and Mother
Inquiry								
In re M.B.	8-Jan	2019	4th Dist.	CA	Un	Cherokee	Remand	Mother
In re A.M.	15-Jan	2019	2nd Dist.	CA	Un	Apache	Remand	Mother
In re Ward	17-Jan	2019	COA	MI	Un	Unknown	Affirm	Mother
In re H.Y.	22-Jan	2019	2nd Dist.	CA	Un	Blackfoot	Dismiss as Moot	Mother
In re A.Z.	29-Jan	2019	2nd Dist.	CA	Un	Unknown	Remand	Father
In re Williams	12-Feb	2019	COA	MI	Un	Unnamed	Affirm	Father
In re A.B.	13-Feb	2019	2nd Dist.	CA	Un	Unknown	Affirm	Mother
In re J.L.	15-Feb	2019	4th Dist.	CA	Un	Unnamed	Remand	Mother
In re I.M.	19-Feb	2019	1st Dist.	CA	Un	Choctaw	Affirm	Father
In re C.J.	28-Feb	2019	2nd Dist.	CA	Un	Unknown	Remand	Father
In re T.L.	18-Mar	2019	5th Dist.	CA	Un	Unnamed	Remand	Father
In re E.O.	20-Mar	2019	4th Dist.	CA	Un	Cherokee	Remand	Father and Minors
In re M.A. Proctor	21-Mar	2019	COA	MI	Un	Unknown	Affirm	Fathers
In re Frankie P.	27-Mar	2019	2nd Dist.	CA	Un	Sioux	Affirm	Mother and Father
In re Ariel R.	27-Mar	2019	2nd Dist.	CA	Un	Cherokee	Remand	Father
In re K.P.	12-Apr	2019	1st Dist.	CA	Un	Unknown	Remand	
In re D.J.	24-Apr	2019	2nd Dist.	CA	Un	Unknown	Remand	Mother and Father
In re J.D.	26-Apr	2019	1st Dist.	CA	Un	Choctaw	Remand	Mother and Father
In re B.C.	29-Apr	2019	3rd Dist.	CA	Un	Unknown	Remand	Mother

In re Isabella S.	30-Apr	2019	1st Dist.	CA	Un	Blackfoot	Remand	Mother
In re K.H.	30-Apr	2019	4th Dist.	CA	Un	Cherokee	Remand	Father
In re M.H.	14-May	2019	COA	IL	Un	Potawatomi	Dismiss	Father
In re S.L.	15-May	2019	5th Dist.	CA	Un	Unknown	Remand	Mother
In re Shane R.	16-May	2019	2nd Dist.	CA	Un	Cherokee	Affirm	Mother
In re Marcus D.	20-May	2019	4th Dist.	CA	Un	Unknown	Dismiss	Mother and Father
In re E.M.	21-May	2019	2nd Dist.	CA	Un	Unknown	Affirm	Mother
In re E.W.	23-May	2019	3rd Dist.	CA	Un	Unknown	Affirm	Mother
In re T.W.	19-Jun	2019	2nd Dist.	CA	Un	Cherokee	Remand	Mother and Father
In re Carla V.	20-Jun	2019	2nd Dist.	CA	Un	Unknown	Affirm	Mother
In re Princess R.	24-Jun	2019	2nd Dist.	CA	Un	Tiano	Remand	Father
In re B.M.	28-Jun	2019	4th Dist.	CA	Un	Unknown	Remand	Mother
In re M.S.	26-Jul	2019	2nd Dist.	CA	Un	Unknown	Remand	Mother
In re Victoria B.	1-Aug	2019	2nd Dist.	CA	Un	Cherokee	Remand	Father
In re P.R.	2-Aug	2019	2nd Dist.	CA	Un	Cherokee	Remand	Father
In re Paige L.	16-Aug	2019	4th Dist.	CA	Un	Unnamed	Remand	Mother
In re S.J.	23-Sep	2019	2nd Dist.	CA	Un	Apache	Remand	Father
In re Michael L.	11-Sep	2019	2nd Dist.	CA	Un	Unknown	Remand	Mother
In re T.A.	5-Sep	2019	2nd Dist.	CA	Un	Unknown	Remand	Father

In re N.R.	30-Aug	2019	6th. Dist.	CA	Un	Cherokee	Remand	Mother
In re H.T.	1-Oct	2019	4th Dist.	CA	Un	Cherokee	Remand	Mother and Father
In re D.E.	8-Oct	2019	5th Dist.	CA	Un	Unknown	Affirm	Mother
In re O.L.	29-Oct	2019	2nd Dist.	CA	Un	Cherokee	Remand	Mother
In re J.N.	13-Nov	2019	2nd Dist.	CA	Un	Cherokee	Remand	Mother
In re M.E.	18-Nov	2019	2nd Dist.	CA	Un	Shasta	Remand	Mother
In re T.P.	26-Nov	2019	1st Dist.	CA	Un	Chickasaw	Remand	Mother
In re G.L.	3-Dec	2019	2nd Dist.	CA	Un	Unknown	Affirm	Father
In re Daniel H.	13-Dec	2019	4th Dist.	CA	Un	Cherokee	Remand	Father
In re E.B.	16-Dec	2019	2nd Dist.	CA	Un	Cherokee	Remand	Mother
In re K.T.	16-Dec	2019	2nd Dist.	CA	Un	Cherokee	Reversed	Father
In re C.M.	19-Dec	2019	4th Dist.	CA	Un	Sioux	Remand	Father
Interlocutory Appeal								
In re C.J. Jr.	14-May	2019	COA	OH	Un	Gila River Indian Community	Dismiss	GAL
Intervention								
In re Children of Mary J.	3-Jan	2019	SC	ME	Rep.	Passamaquoddy Tribe	Affirm	Tribe
Jurisdiction								
Holly C. v. Tohono O'odham Nation	4-Oct	2019	COA	AZ	Rep.	Tohono O'odham Nation	Remand	Mother
Notice								
In re L.D.	24-Jan	2019	6th. Dist.	CA	Rep.	Doyon	Dismiss	Mother

T.W. v. Shelby Co. Dept. of Human Resources	3-May	2019	COA	AL	Rep.	Chippewa	Affirm	Mother
In re Z.C.	9-May	2019	COA	CO	Rep.	Cherokee	Remand	Mother
In re Damian G.	4-Jun	2019	COA	NM	Rep.	Navajo	Affirm	Agency
In re A.W.	12-Aug	2019	3rd Dist.	CA	Rep.	Picayune Rancheria of Chukchansi Indian Tribes	Remand	Mother and Father
In re A.W.	24-Oct	2019	COA	TX	Rep.	Creek	Affirm	Mother and Father
In re N.R.	1-Oct	2019	COA	WV	Rep.	Point Arena Band of Pomo Indians	Affirmed in part, Reversed in part	Mother and Father
In re S.J.H.	9-Dec	2019	COA	TX	Rep.	Cherokee	Remand	Mother
In re J.W.	2-Jan	2019	3rd Dist.	CA	Un	Blackfoot	Remand	Father
In re B.R.	3-Jan	2019	2nd Dist.	CA	Un	Apache	Affirm	Mother
In re R.V.	3-Jan	2019	2nd Dist.	CA	Un	Omaha	Remand	Father
In re A.K.	8-Jan	2019	4th Dist.	CA	Un	Blackfoot	Affirm	Grandmother and Aunt
In re H.A.	15-Jan	2019	4th Dist.	CA	Un	Oneida	Remand	Mother
In re Guardianship of A.H, E.L.G., and M.N.G	15-Jan	2019	COA	NJ	Un	Cherokee	Affirm	Mother
In re E.J.	16-Jan	2019	3rd Dist.	CA	Un	Cherokee	Affirm	Father

In re Angel M.	24-Jan	2019	2nd Dist.	CA	Un	Apache	Remand	Mother
In re E.T.	31-Jan	2019	5th Dist.	CA	Un	Apache	Affirm	Mother
In re Hailey M.	31-Jan	2019	5th Dist.	CA	Un	Blackfeet	Remand	Mother
In re O.R.	1-Feb	2019	4th Dist.	CA	Un	Cherokee	Remand	Mother
In re Breanna J.	4-Feb	2019	2nd Dist.	CA	Un	Cherokee	Remand	Mother
In re E.C.	13-Feb	2019	3rd Dist.	CA	Un	Klamath	Affirm	Father
In re A.S.	19-Feb	2019	2nd Dist.	CA	Un	Cherokee	Remand	Mother
In re V.S.	21-Feb	2019	2nd Dist.	CA	Un	Chippewa	Remand	Mother
In re M.B.	25-Feb	2019	6th. Dist.	CA	Un	Chickasaw	Remand	Mother and Father
In re B.C.	26-Feb	2019	1st Dist.	CA	Un	Cherokee	Affirm	Father
In re G.C.	12-Mar	2019	4th Dist.	CA	Un	Cherokee	Affirm	Mother
In re G.C.	12-Mar	2019	4th Dist.	CA	Un	Cherokee	Affirm	Mother
H.D. v. Superior Court	15-Mar	2019	2nd Dist.	CA	Un	Cherokee	Dismissed as Moot	
In re J.C.	18-Mar	2019	4th Dist.	CA	Un	Cherokee	Remand	Mother
In re A.D.	20-Mar	2019	2nd Dist.	CA	Un	Cherokee	Remand	Mother
In re J'm	25-Mar	2019	2nd Dist.	CA	Un	Otoe	Remand	Mother
In re T.L.	27-Mar	2019	1st Dist.	CA	Un	Cherokee	Affirm	Mother
In re D.R.	2-Apr	2019	4th Dist.	CA	Un	Cherokee	Affirm	Mother
M.L. v. Superior Court	2-Apr	2019	1st Dist.	CA	Un	Cherokee	Affirm	Mother

In re D.H. Jr.	5-Apr	2019	COA	KS	Un	Cherokee	Remand	Mother
In re P.C.	11-Apr	2019	5th Dist.	CA	Un	Cherokee	Remand	Mother
In re A.G.	11-Apr	2019	COA	OH	Un	Ponca Tribe	Affirm	Father
In re D.S.	18-Apr	2019	2nd Dist.	CA	Un	Unknown	Affirm	Father
In re Johnston and Jenkins	18-Apr	2019	COA	MI	Un	Sioux	Remand	Father
In re A.G.	22-Apr	2019	1st Dist.	CA	Un	Yurok	Remand	Father
In re A.M.	25-Apr	2019	2nd Dist.	CA	Un	Choctaw	Remand	Mother and Father
In re L.D.	26-Apr	2019	6th. Dist.	CA	Un	Apache	Remand	Mother and Father
In re J.B.	29-Apr	2019	2nd Dist.	CA	Un	Kawibo	Affirm	Father
In re Jaden P.	30-Apr	2019	2nd Dist.	CA	Un	Cherokee	Remand	Mother
In re J.M.	1-May	2019	5th Dist.	CA	Un	Cherokee	Remand	Father
In re M.H.	22-May	2019	4th Dist.	CA	Un	Choctaw	Remand	Mother
New Jersey of Child Protection and Permanency v. S.C.	3-Jun	2019	COA	NJ	Un	Lenape	Affirm	Mother
In re Lucas H.	11-Jun	2019	2nd Dist.	CA	Un	Cherokee	Affirm	Mother
In re R.G.	11-Jun	2019	5th Dist.	CA	Un	Cherokee	Remand	Mother
In re T.T.	10-Jul	2019	3rd Dist.	CA	Un	Pomo	Remand	Mother and Father

In re A.O.	15-Jul	2019	2nd Dist.	CA	Un	Blackfeet	Remand	Mother
In re M.A.	15-Jul	2019	2nd Dist.	CA	Un	Unknown	Affirm	Mother
In re K.M.	18-Jul	2019	2nd Dist.	CA	Un	Cherokee	Remand	Mother and Father
In re K.S.	23-Jul	2019	1st Dist.	CA	Un	Yurok	Affirm	Mother
In re D.S.	29-Jul	2019	4th Dist.	CA	Un	Blackfoot	Affirm	Father
In re I.F.	7-Aug	2019	5th Dist.	CA	Un	Cherokee	Remand	Mother
In re Lita R.	8-Aug	2019	2nd Dist.	CA	Un	Dakota	Remand	Mother and Father
In re A.T.	13-Aug	2019	5th Dist.	CA	Un	Cherokee	Affirm	Mother and Father
In re A.T.	13-Aug	2019	3rd Dist.	CA	Un	Blackfoot	Remand	Father
In re N.R.	13-Aug	2019	1st Dist.	CA	Un	Apache	Remand	Father
In re T.W.	14-Aug	2019	2nd Dist.	CA	Un	Unnamed	Remand	Mother
In re B.O.	15-Aug	2019	2nd Dist.	CA	Un	Cherokee	Remand	Mother
In re N.R.	Aug-19	2019	6th. Dist.	CA	Un	Cherokee	Remand	Mother
Anita N. v. Superior Court of Los Angeles County	28-Aug	2019	2nd Dist.	CA	Un	Apache	Remand	Mother
In re M.L.	28-Aug	2019	5th Dist.	CA	Un	Chukchansi	Remand	Mother
In re K.H.	16-Sep	2019	2nd Dist.	CA	Un	Cherokee	Remand	Father
In re G.G.	24-Sep	2019	5th Dist.	CA	Un	Chinook Tribe	Affirm	Father
In re M.C.	24-Sep	2019	6th. Dist.	CA	Un	Cherokee	Remand	Mother and Father
In re H.J.	24-Sep	2019	3rd Dist.	CA	Un	Blackfoot	Remand	Mother

In re R.V.	18-Sep	2019	2nd Dist.	CA	Un	Sioux	Remand	Father
In re Ivy D.	12-Sep	2019	4th Dist.	CA	Un	Unknown	Affirm	Mother
In re A.H.	10-Sep	2019	4th Dist.	CA	Un	Cherokee	Remand	Mother and Father
In re L.B.	30-Sep	2019	COA	IN	Un	Cherokee	Affirm	Mother
In re A.E.	1-Oct	2019	COA	TX	Un	Cherokee	Remand	Mother
Sade B. v. Superior Court of San Francisco Co.	1-Oct	2019	1st Dist.	CA	Un	Blackfeet	Remand	Mother and Father
In re Chloe T.	4-Oct	2019	1st Dist.	CA	Un	Winnebago	Remand	Father
In re C.M.	10-Oct	2019	2nd Dist.	CA	Un	Cherokee	Remand	Mother
In re M.T.	18-Oct	2019	4th Dist.	CA	Un	Blackfoot	Remand	Mother
In re C.C.	16-Oct	2019	6th. Dist.	CA	Un	Unknown	Dismiss for Ripeness	Mother
In re Joshua C.	15-Oct	2019	1st Dist.	CA	Un	Pomo	Remand	Mother and Father
In re A.S.	11-Oct	2019	4th Dist.	CA	Un	Cherokee	Affirm	Mother
In re J.M. Stenger-Hoffman	22-Oct	2019	COA	MI	Un	Unnamed	Remand	Mother
In re A.J.	8-Nov	2019	2nd Dist.	CA	Un	Yaqui	Affirm	Mother
In re F.T.	18-Nov	2019	2nd Dist.	CA	Un	Cherokee	Remand	Mother
In re T.M.	18-Nov	2019	2nd Dist.	CA	Un	Apache	Remand	Mother
In re N.L.	25-Nov	2019	6th. Dist.	CA	Un	Cherokee	Remand	Mother and Father
In re A.L.	15-Oct	2019	2nd Dist.	CA	Un	Blackfeet	Remand	Mother and Father
In re Skylar B.	20-Nov	2019	2nd Dist.	CA	Un	Cherokee	Remand	Father

In re A.F.	5-Dec	2019	4th Dist.	CA	Un	Cherokee	Remand	Mother
In re G.T.	4-Dec	2019	4th Dist.	CA	Un	Miccosukee Tribe	Affirm	Father
In re E.R.	2-Dec	2019	5th Dist.	CA	Un	Pascua Yaqui	Affirm	Mother
In re L.B.	2-Dec	2019	5th Dist.	CA	Un	Cherokee	Remand	Mother and Father
In re N.M.	16-Dec	2019	2nd Dist.	CA	Un	Cherokee	Remand	Mother
In re Emmanuel C.	16-Dec	2019	2nd Dist.	CA	Un	Blackfoot	Affirm	Father
In re Daisy F.	23-Dec	2019	2nd Dist.	CA	Un	Unnamed	Affirm	Mother
Placement Preferences								
In re Jesse H.	18-Jan	2019	2nd Dist.	CA	Un	Fernandeno Tataviam Band of Mission Indians	Affirm	Mother and Father
In re Robin S.	5-Aug	2019	1st Dist.	CA	Un	Round Valley Tribe	Affirm	Foster Parents
Alexandra K. v. Dept of Child Safety	17-Oct	2019	COA	AZ	Un	Navajo Nation	Affirm	Sibling's Adoptive Parent
In re Anthony P.	29-Oct	2019	1st Dist.	CA	Un	Karuk Tribe	Affirm	Mother
In re Y.J.	19-Dec	2019	COA	TX	Un	Navajo Nation	Remand	Tribe, Attorney General, Foster Parents

QEW								
In re Audrey T.	29-Jan	2019	COA	NB	Rep.	Oglala Sioux	Affirm	Mother
In re D.E.D.L.	31-Jan	2019	COA	TX	Rep.	Choctaw Nation of Oklahoma	Affirm	Father
Oliver N. v. Dept of Health and Social Services	5-Jul	2019	SC	AK	Rep.	Ninilchik Village	Remand	Father
In re L.L.	1-Aug	2019	COA	UT	Rep.	Ute Mountain Ute	Remand	GAL
In re K.N.B.E.	17-Oct	2019	COA	CO	Rep.	Northern Cheyenne	Affirm	Mother
Jarvis D. v. Dept. of Public Safety et al	10-Jan	2019	COA	AZ	Un	Navajo Nation	Affirm	Father
In re D.L.N.G.	17-Jul	2019	COA	TX	Un	Hopi Tribe	Reverse and Remand	Mother
Darryl W. v. Dept of Health and Human Services	14-Aug	2019	SC	AK	Un	Village of Crooked Creek	Affirm	Father
N.M. v. Texas Dept of Family and Protective Services	26-Sep	2019	COA	TX	Un	Citizen Potawatomi Indian Tribe	Remand	Mother

Dena M. v. State of Alaska	14-Jun	2019	SC	AK	Rep.	Native Village of Eagle	Affirm	Mother and Father
Eva H. v. State of Alaska	8-Mar	2019	SC	AK	Rep.	Unnamed	Remand	
Navajo Nation v. Dept. of Child Safety	18-Apr	2019	COA	AZ	Rep.	Navajo Nation	Remand	Tribe
Reason to Know								
In re L.R.D.	17-Jan	2019	COA	OH	Rep.	Iroquois	Affirm	Father
Matter of S.R.	21-Feb	2019	SC	MT	Rep.	Crow	Affirm	Mother
In re M.T.R.	16-May	2019	COA	TX	Rep.	Unnamed	Affirm	Mother
In re Z.J.G.	3-Sep	2019	COA	WA	Rep.	Central Council of Tlingit and Haida	Affirm	Father
In re C.K.	10-Oct	2019	COA	OH	Rep.	Unknown	Affirm	Mother
In re A.R.J.H.	29-Jul	2019	COA	WA	Un	Athabascan/Cook Inlet	Affirm	Father
Termination of Parental Rights								
In re Child of Radience K.	21-May	2019	SC	ME	Rep.	Penobscot Nation	Affirm	Mother and Father

Steve H. v. State of Alaska	14-Jun	2019	SC	AK	Rep.	Unnamed	Affirm	Father
In re S.B.	3-Dec	2019	SC	MT	Rep.	Little Shell Tribe of Chippewa Indians	Affirm	Father
In re B.B.	23-Jan	2019	4th Dist.	CA	Un	Citizen Potawatomi Indian Tribe	Affirm	Mother
In re Marcus M.	20-Feb	2019	COA	NB	Un	Rosebud Sioux Tribe	Affirm	Father
Julian F. v. State of Alaska	6-Mar	2019	SC	AK	Un	Unnamed	Affirm	Father
In re Tiedyn M.	19-Mar	2019	COA	NB	Un	Choctaw Nation of Oklahoma	Affirm	Father
Riggs v. Ark. Dept. of Human Services	3-Apr	2019	COA	AR	Un	Cherokee Nation	Affirm	Mother
In re Webb/Norman/Braxton	16-May	2019	COA	MI	Un	Osage Nation	Affirm	Mother
In Re K.L.	28-May	2019	SC	MT	Un	Unnamed	Affirm	Father

Dawn B. v. State of Alaska	29-May	2019	SC	AK	Un	Nondalton Village	Affirm	Mother
In re T.A.W.	22-Nov	2019	COA	WA	Un	Shoalwater Bay	Affirm	Father
Transfer to Tribal Court								
In re Shirley T.	3-Jan	2019	SC	ME	Rep.	Oglala Sioux	Affirm	Mother and Father
In the Matter of Dupree M.	3-Apr	2019	COA	NY	Rep.	Unkechaug Indian Tribe	Affirm	Child's Attorney
People in re E.T.	17-Apr	2019	SC	SD	Rep.	Oglala Sioux	Reverse and Remand	Child's Attorney
In re L.R.B.	30-May	2019	COA	CO	Rep.	Navajo Nation	Reverse and Remand	Navajo Nation
In re Navajo Nation	10-Sep	2019	COA	TX	Rep.	Navajo Nation	Affirm	Tribe
In re C.S.	20-Mar	2019	COA	IA	Un	Northern Arapaho Tribe	Dismiss as Moot	Mother
Matter of Connor	31-Jul	2019	COA	NY	Rep.	Choctaw Nation of Oklahoma	Affirm	Mother
In re K.L.J.	16-Jul	2019	COA	NC	Rep.	Cheyenne River Sioux Tribe	Affirm	Aunt