No. 12-399

IN THE
Supreme Court of the United States

ADOPTIVE COUPLE,
Petitioners,
v.

BABY GIRL, A MINOR CHILD UNDER THE AGE OF FOURTEEN YEARS, BIRTH FATHER, AND THE CHEROKEE NATION,
Respondents.

On Writ of Certiorari to the South Carolina Supreme Court

BRIEF FOR THE SEMINOLE NATION OF OKLAHOMA AS *AMICUS CURIAE* IN SUPPORT OF THE RESPONDENTS, BIRTH FATHER AND THE CHEROKEE NATION

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INTERESTS OF THE SEMINOLE NATION

The Seminole Nation is an Indian Nation located in Seminole County, Oklahoma. [1] The Seminole Nation of Oklahoma is federally recognized by the Secretary of the Interior as a Native American Tribe for the purpose of government-to-government relations. [2] As of February, 2013, the Seminole Nation has over 18,000 citizens. Seminole County, Oklahoma, is a checkerboard of tribal trust property, Indian allotments, restricted Indian lands, and dependent Indian communities. Native Americans make up at least 22% of the population of Seminole County.

The Seminole Nation is particularly concerned that this Court's decision will impact its ability to participate in child custody proceedings involving its citizens, and more importantly, its children. As Congress found, "there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children." [3] Through its children, the Seminole Nation is able to pass on its culture, customs, and governmental principles. If this Court thwarts the protections provided by

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[1] Pursuant to this Court's Rule 37.6, *amicus* affirm that no counsel for a party authored this brief in whole or in part, or made a monetary contribution intended to fund the preparation or submission of this brief. No person other than the *amicus* and their counsel made such monetary contributions. Pursuant to this Court's Rule 37.2, letters from the parties consenting to the filing of this brief have been filed with the Clerk of the Court.

[2] Federal Register / Vol. 77, No. 155/ Friday, August 10, 2012.

[3] 25 U.S.C. § 1901(3).

Congress pursuant to the Indian Child Welfare Act, 25 U.S.C. § 1901 *et seq.* (the "ICWA"), the Seminole Nation is concerned it will lose connection to some of its precious children, no matter how remote that connection may be. Over time, if the only children Indian Nations may protect are those adjudicated in their own courts or born in their own territory, the Indian Nations will eventually cease to exist.

As a government, the Seminole Nation has an interest in protecting its children and ensuring they remain connected to the Nation. Its children, its future citizens, future government officials, future legislators, and future Chiefs, are vital to its continued existence. The ICWA is one of Congress' chosen mechanisms in protecting these interests.

SUMMARY OF THE ARGUMENT

Congress has chosen to pursue a policy of developing strong, effective, capable Indian Nation governments through self-determination. In furtherance of Congress' policy, Tribal self-determination is reflected in the constitutional governments that not only determine who may be citizens, but also establish legislative, executive and judiciary branches. The Indian Nations have worked to self-sustain their governments. In light of these efforts, *inter alia*, this Court determined long ago that Indian Nations are political in nature.[4]

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[4] *Cherokee Nation v. Georgia*, 30 U.S. 1, 8 L. Ed. 25 (1831); *See also United States v. Kagama,* 118 U.S. 375, 6 S. Ct. 1109, 30 L. Ed. 228 (1886); *United States. v. Sandoval*, 231 U.S. 28, 46, 34 S. Ct. 1, 6, 58 L. Ed. 107 (1913).

In addition to establishing a policy of self-determination, Congress recognized that future citizens are an indispensable component of any of these governments.[5] The ICWA is one of the means and mechanisms of pursuing this Congressional policy. Congress has enabled Indian Nations to provide opportunities for Indian children to be future citizens, thereby assuring that the component of citizenry, indispensable to any government, continues to exist.[6]

Deciding upon the mechanism to ensure that future citizens have a connection to the Nation, and given that control of Indian affairs is exclusively within the power of Congress, Congress, *inter alia*, chose to impose upon the States Federal standards in child custody proceedings which require the inclusion of Indian Nations and apply Federal standards to parents of an Indian child. In furtherance of these goals, the ICWA provides a Federal definition of "parent" and "Indian child". Through the ICWA protections, an Indian Nation is provided the ability to interpose its interests in child custody proceedings in State courts.[7]

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[5] 25 U.S.C. § 1901(3).

[6] *Id*.

[7] *United States v. Jicarilla Apache Nation*, ___ U.S. ___, 131 S. Ct. 2313, 2325, 180 L. Ed. 2d 187 (2011) (*citing Cherokee Nation v. Georgia,* 30 U.S. 1, 17, 8 L.Ed. 25 (1831); *Heckman v. United States*, 224 U.S. 413, 444, 32 S. Ct. 424, 434, 56 L. Ed. 820 (1912); *United States v. Sandoval,* 231 U.S. 28, 48, 34 S.Ct. 1, 6, 58 L.Ed. 107 (1913).

This Court cannot impose limits or change Congress' chosen means and mechanisms, which were enacted to further Congress' goal in protecting Indian children, parents of Indian children, and Indian Nations. The policy with regard to Indian Nations and Indian people is a decision for Congress to make via legislation and requires deference from the Court.[8]

By allowing the Indian Nation to participate in custody proceedings, its interests are protected by ensuring the child remains connected to the Nation in a safe, Indian home. Moreover, Congress balanced the Nation's rights by requiring Courts to determine that custody by the parent of an Indian child would not "result in serious emotional or physical damage to the child."[9]

Thus, under the express terms of the ICWA, Congress requires the application and protection of Federal standards and definitions to the parents of an Indian child and Indian Nations in child custody proceedings. In termination proceedings, the ICWA will only allow the termination of parental rights where: (1) "active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful";[10] and (2) "that the continued custody of the child by the parent or Indian custodian is likely to result in

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[8] *Jicarilla Apache Nation, supra.*
[9] 25 U.S.C. § 1912(e).
[10] 25 U.S.C. § 1912(d).

serious emotional or physical damage to the child".[11] Moreover, the ICWA grants authority to an Indian Nation to intervene in State court proceedings "to invalidate such action [by the court] upon a showing that such action violated any provision of sections 1911, 1912, and 1913" of the ICWA.[12] In furtherance of this provision, the ICWA provides Federal definitions of "parent" and "Indian child." An Indian child, under the Federal definition, not only includes enrolled citizens of an Indian Nation, but also children that are eligible to be enrolled.[13]

These Federal standards and protections fulfill the United States' moral and legal obligations to the Indian Nations, which have been entrusted exclusively to Congress. Moreover, the ICWA ensures that an Indian Nation can protect its children. It ensures the children are in a safe home and a home that will have some connection to the Nation. The ICWA also ensures the right that a child and a citizen parent "have some demonstrated opportunity or potential to develop not just a relationship that is recognized, as a formal matter, by the law, but one that consists of the real, everyday ties that provide a connection between child and citizen parent and, in turn, their [government]."[14]

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[11] 25 U.S.C. § 1912(f).
[12] 25 U.S.C. § 1914.
[13] 25 U.S.C. § 1903(4).
[14] *Tuan Anh Nguyen v. I.N.S.,* 533 U.S. 53, 64-65, 121 S. Ct. 2053, 2061, 150 L. Ed. 2d 115 (2001).

Based on the express terms of the ICWA and Congressional policy, there can be little doubt the ICWA was meant to confer indispensable rights to parents of Indian children and to Indian Nations to prevent the loss of Indian citizens, or, at the very least the opportunity of those children to be citizens. In the instant case, if the ICWA is not followed, Baby Girl will be lost to the Cherokee Nation. The very purpose of the ICWA was precisely to prevent such a loss from occurring.

FACTUAL BACKGROUND OF THE CASE

The events that led to the South Carolina courts' placement of Baby Girl with her Father are recounted in Father's brief and supplemented by the Cherokee Nation. The Seminole Nation incorporates those statements herein by reference.

ARGUMENT AND AUTHORITY

The Seminole Nation of Oklahoma requests this Court affirm the decision of the South Carolina Supreme Court. A parent of an Indian child and an Indian Nation are permitted to invoke the protections of the Indian Child Welfare Act, 25 U.S.C. § 1901 *et seq.* ("ICWA"), in order to preserve the Indian heritage of their child and ensure the continuance of future citizenry for the Indian Nation. The ICWA provides Federal standards which govern and control in custody proceedings involving Indian children, which are necessary to prevent the loss of Indian children to their Indian Nations. Congress has determined these Federal standards are also

necessary to fulfill its trust obligations to Indian people. These policy decisions are within Congress' exclusive province and must be respected by the Courts. The ICWA's protections not only safeguard a child's right to her Indian citizenship, but also the Indian Nation's interest in protecting its children and maintaining a bond in order to pass along its government, culture and traditions to future generations. The ICWA was established to ensure Indian children were not lost to their Indian Nation.

A. Historical Framework

In order to understand the backdrop of the ICWA, a brief history of the development of Indian Nations and the trust relationship between the United States and the Indian Nations is necessary. The History of the Seminole Nation is demonstrative of the histories of many Indian Nations.

1. History of the Seminole Nation

The Seminole Nation originally occupied, in large part, the current State of Florida. In the early 1800s, the United States adopted a policy to remove Indians to Indian Territory to free up land for white settlements. Indian Territory is presently the State of Oklahoma. The majority of Seminoles were first removed as a result of the Treaty of Payne's Landing, with the first group arriving in Oklahoma in 1836.[15]

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[15] 7 Stat. 368 (May 9, 1832).

By 1839, most of the Seminole had been relocated to Indian Territory. In 1842, the Seminoles numbered about 3,612 members. The Seminoles were originally located within the Creek Nation's territory. However, in 1856, the Seminole signed a treaty with the Creek Nation and the United States to establish a separate territory for the Seminole Nation.[16]

By 1890, the United States decided to open up Indian Territory for white settlement and adopted a policy to survey Indian tribal land and divide it into allotments for individual Indians. However, pursuant to treaties with the Seminole Nation and the other Five Tribes (the Cherokee Nation, the Choctaw Nation, the Chickasaw Nation and the Creek Nation) (collectively, the "Five Tribes"), the United States did not have authority to simply allot their fee lands like they did with many other Indian Nations.[17] Thus, in 1893, the Dawes Commission was created to force the Seminole Nation, along with the other Five Tribes, to agree to an allotment plan. In addition, this Commission registered the members of the Five Tribes on a census that is now known as the "Dawes Rolls."

In 1898, the Seminole Nation entered into an allotment plan with the United States.[18] This agreement was never put into full effect because the

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[16] 11 Stat. 699 (Aug. 7, 1856).
[17] *See Woodward v. De Graffenried*, 238 U.S. 284, 294, 35 S.Ct. 764, 768, 59 L.Ed. 1310 (1915).
[18] 30 Stat. 567 (July 1, 1898).

United States changed policy again with respect to the Indian Nations.

Thus, the Seminole Nation continued in existence. Between 1900 and into the 1960s, the United States selected and approved the Seminole Nation's Chief. The Seminole Nation's government, along with many of the other Indian Nation Governments, continued in existence and to function. The Seminole Chiefs approved allotment deeds and various leases for land use and oil and gas exploration. They also handled the day-to-day functions of tribal government. This activity was authorized by Congress in furtherance of its guardian-ward relationship with the Indian Nations, as explained below.

In the 1930s, Congress enacted the Indian Reorganization Act in an attempt to renew and reinvigorate tribal self-governance.[19] The United States' policy of local self-government encouraged many Indian Nations to adopt constitutions. This policy is referred to as "self-determination." In implementing this policy, Congress provided federal recognition to various Nations for purposes of establishing government-to-government relations.

However, the self-determination authority provided by Congress was not unlimited. Not every tribe may be an Indian Nation. In *United States v. Sandoval*, 231 U.S. 28, 46, 34 S. Ct. 1, 6, 58 L. Ed. 107 (1913), this Court warned, "it is not... that

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[19] 25 U.S.C. § 461 *et seq.*

Congress may bring a community or body of people within range of this power by arbitrarily calling them an Indian tribe, but only that in respect of distinctly Indian communities the questions whether, to what extent, and for what time they shall be recognized and dealt with as dependent tribes." The Bureau of Indian affairs, as authorized by Congress, eventually laid out seven criteria to determine if an Indian Nation could receive formal federal recognition and protection.[20]

Because the Seminole Nation maintained a relationship with the United States, it, along with the other Five Tribes, has long been formally recognized by the Federal Government for purposes of government-to-government relations. Moreover,

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[20] To be recognized by the Federal Government, an Indian Nation must establish:

1) that observers identified the Indian Nation as an American Indian entity on a substantially continuous basis since 1900;
2) that a predominant portion of the Indian Nation has comprised a distinct community since historical times;
3) that the Indian Nation has maintained political influence over its members as an autonomous entity since historical times;
4) that the Indian Nation provide a copy of its governing document;
5) that the Indian Nation's members descend from a historical Indian tribe;
6) that the Indian Nation's membership be composed principally of persons who are not members of another Federally recognized Indian tribe; and
7) that the Indian Nation not be subject to legislation forbidding the Federal relationship.

25 C.F.R. Part 83, § 83.7.

the Seminole Nation replaced their former government with a Constitution on March 8, 1969, which the Commission of Indian Affairs approved on April 15, 1969. That Constitution was subsequently amended on February 25, 1989, December 14, 1991, and September 20, 2008.

It is established that an Indian Nation has the ability to determine its own membership.[21] Under the Seminole Nation's Constitution, citizenship is determined by descendancy.[22] The other four Five Tribes adopted similar Constitutional provisions.[23]

Moreover, even the United States recognizes citizenship by descendancy. This Court has found that an important government interest is protected by the United State's citizenship statues "to ensure that the child and the citizen parent have some demonstrated opportunity or potential to develop not just a relationship that is recognized, as a formal matter, by the law, but one that consists of the real, everyday ties that provide a connection between child and citizen parent and, in turn, the United States."[24] In furtherance of this goal, the United States grants citizenship to children born outside the territorial confines of the United States based solely

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[21] *Santa Clara Pueblo v. Martinez,* 436 U.S. 49, 98 S. Ct. 1670, 56 L. Ed. 2d 106 (1978).

[22] § 1, ART. II, SEMINOLE NATION CONSTITUTION.

[23] § 1, ART. II, CHICKASAW NATION CONSTITUTION; § 1, ART. II, CHOCTAW NATION CONSTITUTION; § 2, ART. III, MUSCOGEE (CREEK) NATION CONSTITUTION, § 1, ART. IV, CHEROKEE NATION CONSTITUTION.

[24] *Tuan Anh Nguyen v. I.N.S.,* 533 U.S. 53, 64-65, 121 S. Ct. 2053, 2061, 150 L. Ed. 2d 115 (2001).

on the child's parentage.[25] For example, Federal law provides "a person born in an outlying possession of the United States of parents one of whom is a citizen of the United States who has been physically present in the United States or one of its outlying possessions for a continuous period of one year at any time prior to the birth of such person."[26] Thus, the requirements for citizenship of those born outside the United States are dependent upon the citizenship of the child's parents.

In addition to establishing membership, the Seminole Nation, through its Constitution, established the rules and format of its legislature, executive and judiciary. The Seminole Nation, as with all federally recognized Indian Nations, is a functioning government. Under the Seminole Nation Constitution, its citizens are divided into fourteen bands, twelve original bands and two Freedman bands. The Seminole maintain a republican form of government and conduct democratic elections every four years to elect two Representatives from each of the fourteen bands to serve on the Seminole General Council. The Council, chaired by the Principal Chief or Assistant Chief, serves as the governing body of the Seminole. The General Council meets at least eight times a year at the council house on the Mekusukey Mission Tribal Grounds, located on trust land south of Seminole, Oklahoma, to handle the Nation's business.

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[25] 8 U.S.C. § 1401.
[26] *Id.*

The Seminole Nation and its citizens, the Seminole, have endured for thousands of years. They are a political body of people that needs its citizens to remain connected to the Nation.

2. History of Congressional Authority over Indians and Indian Nations

> *The Federal trust responsibility to American Indians is one of the most important as well as most misunderstood concepts in Federal-Indian relations.*[27]

The history of the trust relationship between the United States and tribal governments extends back to the foundation of the Republic, beginning with the Indian Commerce Clause of the Constitution of the United States. [28] Although straightforward in concept, the legal contours of the relationship are somewhat complex given the multiple treaties, statutes, regulations, court decisions and federal policy changes that have impacted the relationship.

Soon after the Constitution was ratified, Congress moved to assume control over Indian trade, beginning with *An Act to Regulate Trade and*

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[27] American Indian Policy Review Commission of the Congress of the United States, Final Report, May 17, 1977, vol. 1, page 125.

[28] "The Congress shall have power . . . To regulate commerce with foreign nations, and among the several states, and with the Indian tribes." U.S. CONST. ART. I, § 3, CL. 8.

Intercourse With the Indian Tribes.[29] Congress established Federal control over Indian Nations and their citizens and applied various laws of the United States to Indian Nations and their citizens.

As for the Seminole Nation specifically, in 1823 the United States assumed specific fiduciary obligations in the Treaty with Florida Indians. Under that treaty, the Seminole Nation "promised to continue under, the protection of the United States, and of no other nation, power, or sovereign." This established a trust relationship with the United States that has continued through numerous subsequent acts.[30]

Based on the acts of Congress and treaties with the Indian Nations, this Court has affirmed over and over again that there is an "undisputed existence of a general trust relationship between the United States and the Indian people."[31] "The Government, following 'a humane and self-imposed policy ... has charged itself with moral obligations of the highest responsibility and trust,' obligations 'to the fulfillment of which the national honor has been committed.'"[32] In that vein, the Indian Nations,

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[29] 1 Stat. 137, 138 (July 22, 1790).

[30] *United States v. Mitchell*, 463 U.S. 206, 225, 103 S. Ct. 2961, 2972, 77 L. Ed. 2d 580 (1983); *Cobell v. Norton*, 240 F.3d 1081(D.C. Cir. 2001).

[31] *United States v. Jicarilla Apache Nation*, __ U.S. ___, 131 S. Ct. 2313, 2324, 180 L. Ed. 2d 187 (2011) (citing *United States v. Mitchell*, 463 U.S. 206, 225, 103 S. Ct. 2961, 2972, 77 L. Ed. 2d 580 (1983).

[32] *Jicarilla Apache Nation*, *supra*, (citing *Seminole Nation v. United States,* 316 U.S. 286, 62 S.Ct. 1049, 86 L.Ed. 1480

under the law, are described as "'domestic dependent nations,' under the 'tutelage' of the United States and subject to 'the exercise of the Government's guardianship over ... their affairs.'"[33] This does not go so far as create a common law trust relationship.[34] Rather, it is one solely defined by, and within the exclusive authority of Congress.[35]

B. The Policy Behind The Indian Child Welfare Act

Under its general trust obligations to the Indian Nations, Congress enacted the ICWA, making the following findings:

> Recognizing the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people, the Congress finds--
> **(1)** that clause 3, section 8, article I of the United States Constitution provides that "The Congress shall have Power * * * To regulate Commerce * * * with Indian tribes" and, through this and other constitutional authority,

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(1942); and *Heckman v. United States*, 224 U.S. 413, 437, 32 S. Ct. 424, 434, 56 L. Ed. 820 (1912)).

[33] *Jicarilla Apache Nation*, 131 S. Ct. at 2325 (*citing Cherokee Nation v. Georgia,* 30 U.S. 1, 17, 8 L.Ed. 25 (1831); *Heckman v. United States*, 224 U.S. 413, 444, 32 S. Ct. 424, 434, 56 L. Ed. 820 (1912); and *United States v. Sandoval,* 231 U.S. 28, 34 S.Ct. 1, 58 L.Ed. 107 (1913)).

[34] *Id.*

[35] *Id.*

Congress has plenary power over Indian affairs;

(2) that Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources;

(3) that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe;

(4) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and

(5) 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.[36]

Congress chose, under the ICWA, to confer more rights to Indian Nations and parents of Indian children than what they might otherwise be afforded under State law. In making this choice, Congress was merely fulfilling its long-standing trust obligations by permitting an Indian Nation the authority to exercise its interest in its citizens residing within the United States. Moreover, to ensure its citizens were not lost to it, Congress broadly defined those people covered by the Act. Congress' stated policy was:

> to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum **Federal standards** for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs. (Emphasis added)[37]

In construing the policy behind the ICWA, this Court held that:

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[36] 25 U.S.C. § 1901.
[37] 25 U.S.C. § 1902.

> The ICWA thus, in the words of the House Report accompanying it, "seeks to protect the rights of the Indian child as an Indian and the rights of the Indian community and tribe in retaining its children in its society." House Report, at 23, U.S.Code Cong. & Admin.News 1978, at 7546. It does so by establishing "a Federal policy that, where possible, an Indian child should remain in the Indian community," *ibid.,* and by making sure that Indian child welfare determinations are not based on "a white, middle-class standard which, in many cases, forecloses placement with [an] Indian family." *Id.,* at 24, U.S.Code Cong. & Admin.News 1978, at 7546[38]

Congress, through the ICWA, created Federal standards, intended to trump State law, in order to accomplish Congress' obligations flowing from the trust relationship with the Indian people and Indian Nations.

C. The ICWA Provides the Necessary Mechanism to Ensure Indian Nation Involvement in State Court Child Custody Proceedings

The statutory protections of the ICWA ensure that the child is not lost to the Indian Nation. The

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[38] *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 37, 109 S. Ct. 1597, 1602, 104 L. Ed. 2d 29 (1989).

Act ensures that an Indian Nation and the Indian child will have an opportunity to develop a connection as a future citizen and government. These protections fulfill the United States' moral and legal obligations to Indian Nations and Indian people.

The Indian Nations have two important governmental interests. First, as *parens patriae*, the Indian Nation's goal is to provide the child with a permanent home.[39] Additionally, the Indian Nation's goal is "to ensure that the child and the citizen parent have some demonstrated opportunity or potential to develop not just a relationship that is recognized, as a formal matter, by the law, but one that consists of the real, everyday ties that provide a connection between child and citizen parent and, in turn, the [government]" [40] That *parens patriae* interest favors preservation, not severance, of natural familial bonds. [41] The ICWA is the mechanism Congress chose for Indian Nations to provide opportunities for Indian children to be future citizens and assure that the component of citizenry, indispensable to any government, shall perpetuate.

At issue in this case are two provisions that are determinative of the rights of a parent of an Indian child - 25 U.S.C. § 1912(d) and 25 U.S.C. §1912(f). Those sections provide that in order to

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[39] *Santosky v. Kramer*, 455 U.S. 745, 766, 102 S. Ct. 1388, 1401, 71 L. Ed. 2d 599 (1982).
[40] *Tuan Anh Nguyen v. I.N.S.,* 533 U.S. 53, 64-65, 121 S. Ct. 2053, 2061, 150 L. Ed. 2d 115 (2001).
[41] *Santosky*, 455 U.S. at 766-67, 102 S. Ct. at 1401-02.

involuntarily terminate parental rights, the Court must find that:

> (1) active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and
> (2) that these efforts have proved unsuccessful[.]"[42]

In addition, the Court must also determine that "the continued custody of the child by the parent … is likely to result in serious emotional or physical damage to the child."[43]

Thus, key to these protections are the determination of who constitutes an "Indian child," who the "parents" of an Indian child are and the child's "Indian tribe." In construing the ICWA, this Court will assume that "the ordinary meaning of that language accurately expresses the legislative purpose." [44] "We must enforce plain and unambiguous statutory language according to its terms."[45] "In determining the meaning of a statute,

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[42] 25 U.S.C. §1912(d).
[43] 25 U.S.C. § 1912(e).
[44] *Hardt v. Reliance Standard Life Ins. Co.,* __ U.S. __, 130 S. Ct. 2149, 2156, 176 L. Ed. 2d 998 (2010)(quoting *Gross v. FBL Financial Services, Inc.,* 557 U.S. 167, 129 S.Ct. 2343, 2350, 174 L.Ed.2d 119 (2009)).
[45] *Id.*

'[this Court] look[s] first to its language, giving the words used their ordinary meaning.'"[46]

The ICWA provides a Federal definition of "Indian child" and "parent." An "Indian child" is defined as "any unmarried person who is under age eighteen and is … eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe."[47] A "parent" is defined as "any biological parent … of an Indian child."[48] However, in the case of unwed parents, the ICWA requires that the unwed father acknowledge or establish paternity.[49]

The ICWA does not leave the child without protection, either. The ICWA carefully balances its expanded parental rights against the child's rights. The child's rights are protected by requiring a showing that custody by the parent would not "result in serious emotional or physical damage to the child."[50]

The child's Indian tribe is afforded an interest in the proceeding, as well. The ICWA provides "any Indian child who is the subject of any action for … termination of parental rights under State law, any parent...from whose custody such child was removed,

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[46] *Levin v. United States*, __ U.S. __, 133 S. Ct. 1224, 1231 (2013)(qoting *Moskal v. United States,* 498 U.S. 103, 108, 111 S.Ct. 461, 112 L.Ed.2d 449 (1990)).
[47] 25 U.S.C. § 1903(4).
[48] *Id.* at (9).
[49] *Id.*
[50] 25 U.S.C. 1912(e).

and **the Indian child's tribe may petition any court of competent jurisdiction to invalidate such action upon a showing that such action violated any provision of sections 1911, 1912, and 1913**" of the ICWA.[51] This section is necessary for the Indian Nation to interpose its interest in the State court proceedings. This section provides the Indian Nation the ability to provide its citizen with a safe home that will also keep a connection with the Nation.

CONCLUSION

This Court must not let Indian children lose their opportunity to become citizens and members of their Indian community. Congress, through the ICWA and in exercising its trust responsibilities, has ensured that Indians and Indian Nations will enjoy heightened protection in child custody proceedings under the ICWA. Native Americans have endured much through their shared history. They were forcibly removed from their homes to Oklahoma and many other parts of this country. The abuses to Indian peoples and Indian Nations are well documented. Congress recognized that without the children - future citizens of the Indian Nation - Indian Nations lose their culture and heritage and eventually the Nations would cease to exist. The ICWA ensures that these Indian Nations, indigenous to this country and to which this Nation's honor has been committed, will not perish from this earth.

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[51] 25 U.S.C. § 1914 (emphasis added).

Respectfully submitted,

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