

**Testimony of the National Indian Child Welfare Association Before the United States House of Representatives Appropriations Subcommittee on Labor, Health and Human Services, Education, and Related Agencies**

**Comments on Federal Efforts to Support Adoption Services with Native Children, Families, and Tribal Nations**

My name is Aurene Martin and I am a board of directors' member of the National Indian Child Welfare Association. I am also the adoptive mother of two Native young men. The National Indian Child Welfare Association (NICWA) is a national American Indian/Alaska Native (Native) nonprofit organization. NICWA has been a leader in the development of public policy that supports Tribal sovereignty and self-determination in child welfare and social services for over 40 years. In this work, NICWA works closely with Tribal Nations, Tribal organizations, and Native organizations and our goals are aligned with the goals of Tribal Nations in improving policies, child welfare programming, and data collection. Our testimony will provide background and comments on the use of adoption with Native children and families and Tribal applications.

**Tribal Family Structures**

While there are cultural variations among Tribal communities, Tribal Nations around the United States often hold distinct definitions of family beyond the nuclear family centered in mainstream American culture. These familial structures are vital to understanding how best to meet Native children's needs, keep them connected to their culture, and ensuring they can develop a positive sense of belonging and identity as Native people. This is especially pertinent to the placement of Native children in temporary and permanent placements in child welfare systems.

In Tribal communities prior to European contact, Native practices and beliefs about raising a child allowed for a natural system of child protection that was marked by extraordinary patience and tolerance, used to teach children self-discipline and to best prepare them to be community members. At the heart of this natural system are beliefs, traditions, and customs involving extended family with clear roles and responsibilities. Responsibilities shared by extended family and community members make the protection of children the responsibility of all people in the community. In many Tribes, aunts and uncles took on roles of parenting, and many elders took on the roles of grandparents who play important roles in cultural teaching, child rearing, and teaching about discipline and respect. Disruptions to the community based, natural helping system began to break down with the advent of the federal boarding school system and policies that operated from the 1860s to the 1970s that separated entire generations from their traditional teachings and Tribal

communities and families. The trauma that many Native people experienced at these boarding schools created conditions under which it was both very challenging to engage in cultural practices, such as traditional child rearing, and consequently contributed to the inability of Native parents to learn and pass on these cultural teachings and practices to their children which created the conditions, knowledge, and tools for Native well-being for generations.

Relative or kinship care is a broad category of care that operates in Native communities that describes many ways children can be raised by other family members when their parents are temporarily or permanently not able to care for them. This includes children placed in adoption, formal guardianships with family members, or being raised by grandparents, aunts, uncles, or other family members. Relative care is a way of accessing existing networks of extended family care and support, in a way that benefits the child by giving them a stable home and increasing their sense of belonging without removing them from their larger family or community. Research shows that children in relative care experience profound and enduring benefits in mental health, economic, and educational well-being because relative care maintains their connection to their family and community. The placement preferences under the Indian Child Welfare Act (25 U.S.C. 1901 et seq.) that apply in state child welfare proceedings involving Native children prioritize relative care placements for these reasons and have been lauded as the gold standard in federal child welfare policy (Brief for Casey Family Programs, 2022). Relative care placements are beneficial for all children, especially for Native children whose communities place a high value on the involvement of grandparents and other extended family in child rearing.

### **Application of Adoption with Native Children and Families**

While almost all Tribal Nations have some teachings and customs associated with adoption, Tribal law and practices do not always utilize more conventional, Western forms of adoption, especially the use of termination of parental rights. For centuries, Tribal Nations have utilized Tribal customary adoption as a way to ensure a Native child will have a permanent home when they cannot safely live with their birth parents. Other forms of permanent placement that Tribes utilize can include relative guardianships and adoption with termination of parental rights.

Tribal customary adoption is based upon centuries old teachings and customs about adoption that are based upon Tribal law, customs, and beliefs. While there can be some variation among Tribes in how a Tribal customary adoption occurs, Tribal customary adoption is designed to provide a stable home where a child can still retain connections to their extended family, Tribe, and culture without termination of parental rights. The adoptive family in this arrangement has full authority and power over day-to-day decision

making regarding the child's health and well-being, but extended family relationships are not severed in this form of adoption. The use of Tribal customary adoption has been increasing among Tribal Nations as more Tribal communities are reclaiming their cultural heritage and customary ways of addressing child and family issues.

Adoption with termination of parental rights is also a part of many Tribal Nation laws and practices, although it is often seen as a last resort in terms of finding the appropriate long-term permanent placement. Typically, a Tribal Nation using adoption with termination of parental rights does not also use Tribal customary adoption and uses the higher evidentiary standards for approving a petition for termination of parental rights that are contained within the Indian Child Welfare Act (proof beyond a reasonable doubt as opposed to what most states use, which is clear and convincing evidence).

The sensitivity to adoption with termination of parental rights can also be traced to previous federal policies that adopted almost 400 Native children into non-Native families far from their communities and removed many more with the intent to adopt them out. The Indian Adoption Project (1958–1967) was overseen by the Bureau of Indian Affairs with the help of the Child Welfare League of America. Native children removed from their families during the Indian Adoption Project were often not in need of adoption or had relatives willing to take them, but instead were adopted far from their homes and communities losing any opportunity for continued contact or connection. In 2001, the Child Welfare League of America apologized for their role in the project noting the harm that had been done to Native children, families, and communities.

Despite previous historical policies and practices, many Tribal Nations have worked diligently with state legislatures, courts, and child welfare agencies to create new laws that authorize state courts to recognize Tribal customary adoptions within state court proceedings involving Native children. These state laws allow the child's Tribe to conduct a Tribal customary adoption in their preferred manner and then have it recognized as a permanent placement by the presiding state court. This has improved the availability of adoption for Native children that cannot return home and need a permanent home, while enhancing their connection to their extended families and community.

Another promising practice has been the development of compacts between adoptive families and Tribal Nations to provide greater access for Native children to their Tribe and community. These compacts, sometimes recognized under state law, typically identify resource people or agencies within the child's Tribe that the adoptive family can connect with to secure opportunities for adopted Native children to learn more about their Tribal heritage and culture. The compacts are used both with non-Native adoptive parents and Native adoptive parents that have Tribal heritage that is different than the child's Tribe.



## **Federal Discretionary Funding That Supports Adoption and Tribal Access**

While the primary funding source that supports adoption services for states and Tribal Nations that operate this program is Title IV-E of the Social Security Act, discretionary funding, like Title IV-B, Subpart 2 of the Social Security Act, can also be used to support Tribal adoption services. Title IV-B, Subpart 2 (formerly the Promoting Safe and Stable Family Program) has discretionary funding that can be used to support a range of child welfare services, including adoption promotion and support services. Approximately 300 of the 574 federally recognized Tribes are eligible to receive these funds. The funding mechanism provides Tribal grants through a 3% set-aside in the statute in addition to an individual grant formula that only allows Tribes that would qualify for at least a \$10,000 grant to receive any funding. Overall, Tribes receive 3% of the currently enacted funding of \$62 million under this discretionary program and 3% of the mandatory funding, currently appropriated at \$420 million for a total of \$14.5 million. This amount does not go very far in supporting adoption services, especially for smaller Tribes that receive grants under \$100,000, which is the vast majority of Tribes that receive this funding.

Other federal discretionary programs that provide funding for adoption services include Title IV-B, Subpart 1 of the Social Security Act (formerly Child Welfare Services), Adoption Opportunities Grant Program, and the Understanding Infant Adoption Program. The Title IV-B, Subpart 1 program provides grants to approximately 400 federally recognized Tribes each year. The average Tribal grant is under \$20,000 so many Tribes do not have the ability to significantly contribute to adoption-related services with this funding. The Adoption Opportunities Program funds one-time grants to remove barriers to adoption, especially children with special needs. While Tribal Nations are eligible to apply for these grants, they often are awarded to larger organizations that are focused on more mainstream projects, rather than issues or services that Tribal Nations would align with. The Understanding Infant Adoption Program funds training to hospital-based staff to help them feel more comfortable discussing adoption issues. While this is a valuable program, it is also centered on adoption through a mainstream lens that does not focus on unique issues for Tribal children and Tribal health services. Overall, while there is interest in Indian Country to improve support for adoption services, specifically Tribal customary adoptions, the current state of Tribal access to child welfare funding and focus of federal discretionary grant programs in adoption is not sufficiently aligned with Tribal interests and values to increase Tribal participation.

Creating incentives, like Adoption Opportunities grants that specifically focus on Tribal priorities in adoption and encouraging states to work with Tribal Nations to develop more supportive adoption policies and programs, could help build additional adoption resources

and supports that Tribal Nations would see as aligned with their priorities and values. As one example of how federal adoption policy for Tribes has been successful, in the One Big Beautiful Bill, Section 70403 (P.L. 119-21), the law extends the federal adoption tax credit to adoptions finalized in Tribal courts whereas previously this was only available to adoptions finalized in state courts. This has been an Indian Country priority for many years and reflects a desire to create parity with states while also ensuring Tribal methods for approving adoptions, like Tribal customary adoption, are given the same recognition as more conventional methods used by states. In many ways, the opportunities to encourage Tribal Nations to participate in federal adoption programming are still very undeveloped, and while Tribal Nations would often prefer to focus on prevention services, there is still interest in developing community based, Tribally aligned opportunities in adoption.

### **References**

Brief for Casey Family Programs and Twenty-Six Other Child Welfare and Adoption Organizations as Amicus Curiae Supporting Federal and Tribal Defendants, *Haaland v. Brackeen*, 599 U.S. 255 (2022).