

## **Family Separation and the Indian Child Welfare Act Transcript**

Hello everyone. I appreciate your attendance today and for your time to join all of us to discuss the family separation and the Indian Child Welfare Act. Amanda Morris from Judicial Council of California will be assisting with, you know, moving forward with a slide. With each slide. Amanda if you can go ahead and then, um, start slide. That would be great. And I will be turning off my camera during the presentation, but I will be back towards the end when I would address everybody's questions and hopefully, we will have enough time for that thank you. Thank you.

Before we begin, I just would like to acknowledge that we are working and residing on the land of the Ohlone people and the Coastal Miwok people. The Bay Area has been the home for these two Indigenous groups for over 10,000 years and more. So, it's very important for us to acknowledge that we are living and working on their ancestral land.

So, today's presentation is divided to two parts. First there will be a synthesis of substantive history, policy making, and different laws about the U.S federal government's past and current family separation policy. I believe that history is the natural and inevitable part in the legal profession, because in order for us to use law intelligently and in a creative and nuanced manner, or lawyer, especially those of us who are investing in law to advance civil rights of marginalized communities, we must know not only what the law is, but where the law came from and why it still exists. So, the first part will provide a historical context as to the U.S government's family separation policy, and how it all ties to the enactment of the Indian Child Welfare Act. In the second part we will have a brief overview and summary of the Indian Child Welfare Act, commonly referred to as ICWA in acronym. Including the discussion of a case of *Bracken v. Bernhardt*. Which is considered as the most significant ICWA litigation case that is currently waiting to be decided by the fifth circuit Court of Appeals after the inbound hearing that was held in January 2020. And then I will do my best to answer each and one of your questions submitted in advance. And if I run out of time, you're more than welcome to contact me as I will provide my contact information at the end of the presentation.

Next. So, 2018 marked the 40th anniversary of the Indian Child Welfare Act. And to mark the occasion the senator Tom Udall the senator from New Mexico and vice chairman of the senate committee on Indian Affairs provided these remarks. "The Indian Child Welfare Act served as both the recognition and change of course from a dark period in our history in which children from tribal communities were separated from their parents their families and their culture", and "We should do everything we can do to ensure native children in the Child Welfare System are able to retain their culture and connection to their tribal communities."

What stood out and resonated the most with me from these remarks was his reference to a dark period in our history where children were separated from their parents. And although this is precisely why the specific federal law of ICWA was enacted, much attention has been given lately to how hundreds of migrant and indigenous children at the U.S-Mexico border have been also separated from their parents. Not only by, and these issues have been brought up, not only

by lawyers, but by doctors, psychologists, children's advocates, and immigrant rights and activists etc.

So, I think it's important for us today to examine the history of laws and policies that formally implemented this separation policy, and why once again it is important for us to preserve the specific federal law Indian Child Welfare Act to make sure that Indigenous culture and driver sovereignty can be maintained and protected. So, the part one we are going to discuss the history of laws and policies of child and family separation in Black immigrant and Indigenous communities.

Next slide please. So, very soon after the current federal administration, um, implemented zero-tolerance policy in 2018, um, you know there was a lot of media coverage about this policy because it was specifically designed to detain and criminally prosecute each and every migrant including asylum seekers, and also systematically separating newly arriving adult parent migrants from their children. And many newspapers and current affairs magazines published op-eds authored by some of the country's really most highly regarded historians and investigative journalists. And their articles all touched upon one consistent thing. Which is that the children's separation from their parents and the breakup of migrant families is not really something new in this country. But rather there has been a historical continuity of instituting such policy in this country starting in the slavery era that broke up black families, and then of course forcible removal of Native American children from their communities etc.

So, what is this history? So, what you're looking at is the, uh, the op-ed that was published by DeNeen Brown. Um, he is a professor of journalism at University of Maryland and, also the contributing writer to Washington post. And I think this article really captures, um, you know, the kind of historical parlor that exists not you know existed between the African American community, and immigrant communities, and Native American communities, in terms of you know the policies they had to suffer from you know having their children taken away from their parents. So, uh, the headline of this article as you can see uh writes a barbaric America's cruel history of separating children from their parents. And a lot of these articles, um, you know, are not just a personal opinion of these writers, but, you know, these are very well researched and the well-documented, um, you know, kind of records of, you know, how this policy has over extended period of time has really, um, had a detrimental impact on the growth of the communities in, um, in growth of each of this community.

You can go to next slide. And this is another op-ed that was authored by Professor Tara Hunter, who is a professor of History and African American studies at Princeton University. And this was published in New York times in June 2018. And, uh, to quote her from this op-ed she writes “African Americans were not alone in suffering separation starting in 1879, but tens of thousands of Native Americans were required to leave their families and attend boarding schools. and assimilation was the main goal of the school as the children's names were changed, their language, religion, and other cultural traditions were suppressed.”

Next slide. And these are some of the headlines from, of different articles that I was able to research, and just kind of put together for the purpose of this presentation. And the latest headline that hopefully all of us are familiar with is that in the New York times and a lot of other mainstream news medias also reported about, in the parents of the 545 migrant children being separated at the border and their parents cannot currently be found.

Next slide. So, this is a very abbreviated timeline in a chronological sequence of some of the key of, the children's family separation policy and events that were instituted by the U.S government. And as you can see it touches upon the separation of Black families during Slave Trade era. And then of course forcible separation of Native children and being sent to Indian Boarding Schools, and they were first instituted and funded by a federal law called Civilization Fund Act. And then there is a mass arrest and separation of children and families as Japanese Internment Camps. and there was a large mess deportation in the U.S history. There was a Mexican Repatriation in 1929 to 196, 1936. And “Operation Wetback” in 1954. And presently, once again, the forceful separation of Indigenous migrant children of asylum seekers, that started with the zero-tolerance immigration policy in 2018.

Next slide. So, let's begin with Slave Trade and separation of Black families. Like, how did this really start? And what kind of impact it had, it had, on black families. And continues to have.

Next slide. These pictures are from the website dedicated to the project called “Last Scene”. And this is a project of the Department of History at, uh, Villanova his, university and the Mother Bethel AME Church. And this is essentially a project to collect newspaper ads placed by Black mothers, fathers, husbands, sons, and daughters, in their attempt to find another after the emancipation. To look for one another after being separated by their slave masters. According to the research by Equal Justice Initiatives and research by their executive director and the prominent civil rights lawyer Brian Stevenson. He's the author of Just Mercy, and really a great mind that built the country's first museum dedicated to, uh, to, you know, in order to remember the lynching of Black people in this country in Montgomery, Alabama. According to him more than 500 thousand estates, people are unfortunately separated from their spouses and parents. And the one out of four of those who were sold at slave auction or are children. So, these pictures and this specific project is really, um, a powerful evidence, showing us that, you know, there are Black families in this country still trying to comb through their genealogy. Through their family history. Trying to locate how their grandparents or great, great parents, uh, suffer to break up their families and whether they were able to reunite, or whether there is some sort of still, uh, some sort of, you know, searching still going on within their family.

Next slide please. The New York Times 1619 Project that was published last year also provides us with further facts of how enslaved Black mothers often suffered losing their children to the slave trade. And I like to read this quote because it really touched me pretty deeply when I first read it. “On March 7, 1854, Sally and her three daughters, Sylvia, Charlotte, and Elizabeth, was sold for \$1,200. Sally was able to remain with her children at least for a short period of time, but most enslaved women had to endure their children being forcefully taken from them. Their

ability to bear children, or their increased quote, unquote, was one of the reasons they were so highly valued. And laws throughout the country ensure that a child born to an enslaved woman was also the property of the enslaver to do with as he saw fit, and whether to make the child work or to sell the child for profit.”

Next slide please. And this is one of the most commonly researched, or searched, and observed picture when you just do the simple google search or you go to the website of different, um, you know, historical archives, and whatnot. You know, and talking about the separation of mother and children at a slave auction, um, I mean, I think, you know, this picture, uh, basically, you know, summarizes, um, um, you know, what, what, took place during the, uh, Slavery Era.

Next slide. And this is another picture.

Next slide please. One example of law that legally codifies the separation policy passed by the state of Virginia. Is in, is in 1662. And the law stated that the “status of the mother determined if a Black child would be enslaved, and an enslaved child would be taken away from the family.” And the increasingly harsh and restrictive laws were passed over the next 40 years culminating in the Virginia Slave codes of 1705. And if you are, um, interested in learning more about this, you know, there is a fantastic book entitled “Stolen Childhood: Slave Youth in Nineteenth Century America”, authored by Wilma King, published by Indiana University Press in 1995. And her research, uh, shows that approximately one-fourths of total slave-shipped America from Africa were children. And millions of children and youth enslaved, uh, were separated from their families in Nineteenth Century United States. And just, you know, as you can imagine the trauma of separation and the fear of never seeing their parents or family members again, were very pervasive within the slave community.

Next slide please. And, of course, sexual abuse and exploitation, and, of enslaved boys and girls was also pervasive. And a force conversion to Christianity was another kind of indignity or basement that was suffered by enslaved children, and parents, and families. Because they were being denied to practice their own African traditional religions, or their religious beliefs. And they were forced to convert to Christianity. It's an experience that is shared by Native American children who were sent to Boarding Schools or placed in the foster care system. So, those two communities also share this rather, um, you know, tragic, um, history.

Next slide please. And, um, from 1942 to 1945 there was Mass arrest and separation of children and families at the Japanese Internment Camps. There's a picture of American story regarding a Japanese Internment Camp at Anzana, California, in 1943.

Next slide and these are some of the pictures from the internment camps, and, you know, the moments when the church, where the Japanese families were shipped over to internment camps. And, also, being separated from their relatives, and from their own children. And these two specific pictures were taken at Tule Lake Internment Camp. And the second one was taken in 1945. And this picture is currently preserved at the Japanese American National Museum.

Next slide. So, separation of children and family at the Japanese Internment Camp the President Roosevelt signed the Executive Order 9066 that authorized a mass force removal and incarceration of approximately 120,000 people of Japanese descent at 10 different Internment Camps. And nearly half of them were children. And were incarcerated for up to four years without any type of due process of law, or any factual basis. So, in some of these cases family members were separated and put into different camps. For example, some were in prison for “sedition” for protesting the incarceration. And some of them did not get to see their children or their parents, or grandparents, for very long period of time. And while I was, um, doing the research, uh, for this presentation, um, I found out this really interesting, and I think rather telling fact, which is that Dillon Myer, he was the director of the War Relocation Authority, who essentially oversaw the removal of Japanese Americans Internment Camps. He was, you know, kind of directing all the logistics. And, uh, um, you know, making sure that, you know, uh, the parents and the children, you know, if they were being separated. And I mean everything was, he was, basically taking care of everything under the, uh, the Executive Order by the President Roosevelt, right. But he happens to be also the same person who oversaw, and supported the Indian termination Policy, and forced, enforceable relocation of Indigenous people to urban cities, including San Francisco and L.A. So, I don't have, I don't currently have enough insight into whether this was a coincidence, or whether, um, you know, his experience of, you know, directing, um, you know, uh, the separation of, you know, Japanese, uh, people, of Japanese descent, you know, um, in an Internment Camp provided him with in terms of expertise. Um, you know, of supporting the Indian Termination Policy of vice versa I'm not sure. But I think it's a very interesting historical fact that, um, that deserves, um, more attention.

Next slide please. So, um, the Trauma of Internment, um, this is rather has been discussed, uh, been, uh, discussed and talked about quite often since the zero-tolerance Immigration Policy was instituted in 2018. Because Japanese American communities really recognized the fact that they, this has, this previously happened to our community. So, why is this happening all over again, right? So, there were a lot of interviews being conducted with the survivors of Internment Camp, and, um, you know, survivors who were actually a little children or teenagers. You know, while they were taking Internment Camps, and how that really impacted the course of their lives. And speaking to journalists, um, you know, as editors now. And one of the persons that was interviewed was, um, by the Washington post was, a, uh, you know, elderly woman named Alice. And she shared her experience of, you know, very feeling terrified when she came home and not being able to find her parents. And I just would like to read the very last paragraph. It's a direct quote from this article. “Alice was 15 and living in Norfolk California when authorities arrested her parents because they taught at a Japanese language school. Alice and her 18-year-old sister were at school when her parents were arrested. They came home to find him gone. Alice still recalls the trauma of that day, marked by the sharp awareness that she didn't even get to say goodbye to her mother and father before they were taken away. And the arrests, unwarranted as they were, were just the first step in what soon became a policy of total exclusion.”

Next slide, please. So, now we are, uh, back in 2018, 2019, more contemporary. And, um, because of the zero-tolerance Immigration Policy. Um, as I mentioned earlier, um, you know, hundreds of children were separated from their parents. They have no idea, many of them still have no idea, where their parents are. Um, and, this picture, um, it shows the migrants who cross the U.S-Mexican border being detained arbitrarily in El Paso, Texas. And I got this from the Human Rights Watch website.

Next slide, please. And as you can see, this was very broadly covered by different media networks; by PBS News Hour, by CBS, NBC, New York Times, to Washington Post, Guardian Economist, etc. And it really grabbed the attention of not only that, you know, of the people who are residing in the United States and paying attention to the news, but really, it grabbed the attention of the International community that this is happening in the United States.

Next slide. So just to quickly provide a summary of what this zero-tolerance policy was all about and, how it continues to impact the migrant and immigrant communities. Is that, so basically, under current administration Department of Justice formerly implemented zero-tolerance policy. That in all migrants crossing the border, including those asylum seekers, be referred to DOJ for criminal prosecution. And they were imprisoned and any accomp, accompanying children under the age of 18 were forcibly separated from their parents without due process. And then children were handed over to Homeland Security or Human Higher Services Department, or folks who work for them. And would ship them miles and miles away and scattered them among hundred office of refugee resettlement, refugee resettlement camps across the 23 different states. And in June 2018, CNN famously reported that “a Honduran woman was breastfeeding her daughter in detention in Texas when federal authorities snatched the child away from her.” And in 2018, for the first time, publicly, the Department of Homeland Security, publicly acknowledged that it separated nearly 2,000 children from their parents or legal guardians between April and May 31<sup>st</sup>. But, um, you know, just, I looked at these figures one more time this morning to see if there has been any updated figure because, you know, the current administration Department Homeland Security recently provided, you know, reports required by the House Judiciary Committee. And initially it was reported, it was close to 1,200 children that was separated from their parents. But now we are looking at the figure that is close to three, three thousand children. Between twenty-seven hundred to three thousand children were taken away from their parents. And the parents of 545 of migrant children, still have not been found. And they actually have, many of them have been deported back to the, their country of origin, without their children. And children's attorneys, those children who are being represented by attorneys, have not been informed which country the, you know, parents were deported back to. What their identities were, nothing. And about 60 of these children were underage of 5 when they were separated. And federal administration also announced that in June 2019, that they will use the former Japanese Internment Camp to detain 14 hundred, sorry about, the attachment there should be one less zero. Um, 1,400 migrant children. And this, of course, brought up a lot of painful histories for Japanese American communities, because they still remember very vividly the condition of this Internment Camp. And it really resonated with them because of the horrifying conditions that the detention centers where these migrant children are currently or have been detained for a long

time. And there was a hearing in June 2019, in the United States Court of Appeals for the ninth circuit in San Francisco. And it was a case basically about how the federal government is legally obligated to treat migrant children who are in custody, right? So what is the standard of care? Like what type of, you know, care is federal government obligated to provide to these children who are being detained away from their parents? And there were numerous reports about how these children didn't even have a toothbrush. They didn't have a stove, etc. And attorney representing the Department of Homeland Security were actually debating, um, you know, the meaning and the parameter of the safe and sanitary conditions. What is safe enough environment and a treat, you know, for these young children. And, um, that one of the judges who heard this case, was Judge A. Wallace Tashima of the, you know, ninth circuit court. And he is, he actually was imprisoned himself as a child in the Japanese American Internment Camp in Arizona during the World War II. And he remarked and challenged the attorney of the DHS, and he said, you know, do you think he's winning everybody's common understanding that if you don't have a toothbrush, and you don't have a stove, and if you don't have a blanket, that's not safe and sanitary, right? And I actually, uh, watched this argument live as it was happening on the Court website. And it was really something to see. Uh something to see, you know, to kind of debate whether the children should have an access to these basic sanitary items. Um, and, uh, you know, what type of legal, uh, kind of, you know, standard should be applied too. So, um if you have time and you like to learn more about this specific hearing, please, um, you know, I think it's still available on the court website.

Uh, next slide, please. Thank you. So now, um, you know, we are, uh, looking at, uh, you know, histories that really led to the enactment of, um, Indian Child Welfare Act. But you're looking at the very first Boarding School that was opened in Pennsylvania in 1879 to 197, 1918. And now this school is a part of the U.S Army War College. And it was the first federally funded off reservation Indian Boarding School, where these children were taken away from their families. They had, they, uh, their hair was cut. And they were prohibited from their, speaking their own Indigenous language. And just, you know, just completely, uh, cut off from where they were born and raised.

Next slide. And this is another picture that shows pretty young Lakota Indian boys. Um, you know, before and after they were sent to Boarding School. And, uh, sort of, that kind of, you know, I would argue, the fourth transformation that they had to go through when they were taken to Boarding School. So, the historical context of the 1978 Indian Child Welfare Act, and how the force of separation Native children and being sent off the Boarding School restarted. And, what, you know, what, what, what started this, and what are some of the law that were a lot. What, what, is the law that was elected to provide the financial support for this. Um, in 1817, 1819, a U.S congress enacted a law called Civilization Fund Act, authorized by the president. And he wrote in every case where he shall judge improvement in the habits and conditions of such Indians, participle, to employ capable persons of good moral character, to introduce to any tribe joining a frontier settlement, to the arts of civilization, right? And with a budget of ten thousand dollars per year, the fund paid missionaries, and church leaders, to partner with the federal government to establish schools in Indian territories. To teach Native children to replace their

tribal practices with the Christian practices, right? So, this now, is familiar to all of us, because we saw this, you know, previously during the Slavery Era. When the children were separated from their mothers. Were sold off at the slavery auctions. That they also were forced to convert Christianity. So, we see that kind of common, um, shared practice, as well. And the commissioner of Indian Services provided a report to congress in 1867 stating, “that the only way to deal with quote, unquote, Indian problem, was to separate children from their tribes.”

Next slide, please. So, just very quickly before we get into the substantive, you know, discussion of ICWA, and, uh, some of the ICE law, um, uh, we, let's just briefly talk about understanding, you know, the impact of historical trauma. And what the implication of when working with immigrant indigenous families.

Um, next slide, please. So, what are some of the consequences of Child Separation Policy? And these are just, not my own personal opinions, but these are, you know, a lot of social workers, or children's advocates, or the lawyers, etc. Are engaged, still engaging, in ongoing research, and are documenting the impact that it is having on different communities. But, you know, uh, among all those, um, yes, you know, just harmful consequences that have been suffered, due to the separation policies, we see again and again, and again, that there is a, this policy of assimilation in the erasure of non-white identity and the U.S government. Uh, you know, they often took on this “assumption that, uh, when it comes to Indian children, that any Indian custom, or per se, objectionable, whereas the customs of whites were the ways of civilization.” And destruction of the most intimate relationship between the human beings, that really starts with infants. With their, and their relationship with their mothers as small children, and the parents. And if you grow up in a collectivist a culture, um, you know, where it's not just about the, you know, individual, uni, family, that takes care of the children, but it takes the whole community or whole village to, you know, raise your children. But not only your children, but your neighbor's children. This cutting tied between the, you know, children, and the parents, and the families. It really leads to, it has, it bears a direct relationship to the destruction of the entire community, right? The destruction of the community's familiar and social fabrics of a community. So, this is one of the most detrimental and harmful consequences of this Child Separation Policy that started in the Slavery Era. And then went on to, you know, it went on during the Japanese and Internment Camp period. And now we're seeing with the disruption of the family, with the migrant communities. And now, uh, you know, some of this, we can, um, you know, I kind of, um, analyze, and, uh, you know, notice some of these patterns that may play a role in, you know, some of the prejudices that we all bring into our profession, right? When we are working with communities that come from the marginalized background, right? So, I think it's just really important for us not to forget that there are real emotional, psychological consequences on these children. But not just as individual children, but as a kind of, you know, community as an entity. So, um, it's, just in case, it's very essential that we, uh, do not lose sight of that.

Next slide, please. So, now we can, uh, talk about recent IWCA case decisions, and the legislations. But before we talk about those cases, I just would like to provide very brief



background on, you know, what ICWA is, and how it was enacted. And, and why it is incredibly important for us to preserve this important federal law.

Next slide. So, why was ICWA enacted and what was the legislative intent behind the ICWA?

So, is the, ICWA is essentially a federal media law that was enacted by congress in 1978, in response to following congressional findings, right? There was an alarmingly high percentage of Indigenous families that were being broken up by often unwarranted removal of indigenous children. And also, alarmingly high percentage of the removed children were placed in non-Indigenous foster care and adopted homes. Now I, as some of, you may have, I watched the documentaries on land twice, from beginning to the end. And the reason I have a particular appreciation for the documentary, is because it has actual clips of the, of the, in, the congressional hearings. You know, where they heard the testimonies from the Indigenous mothers, and their lawyers, talking about, you know, how their children were removed from their families, right? And one of the most common reason that was given to them by the county social worker was that it sometimes had nothing to do with physical abuse. There was no evidence of any type of abuse whatsoever. But sometimes they were just given very arbitrary reasons. Social Workers coming into your family and saying we simply just don't think that you are, you can be fit parents for your Indian child. Um, you know, it could be a, maybe, you know, side of, maybe, evidence of some sort of poverty. Or maybe it was not very neatly cleaned household. Or you know, whatever. But, you know, there were no, like, you know, a standard in which the social workers would equally apply. But when it came to the Indian families they often just say, um, we just don't think you're going to be a good parent, so we're going to take your children away, right? So, there were all these, you know, serious concerns that this is not right. And the federal government has to implement some sort of law to mitigate the damage that is being done to Indigenous families and communities. And, you know, when these children who were adopted or who were, you know, removed, and they were either temporarily or permanently placed in the non-Indian adopted homes, they frequently suffer the very serious adjustment, acceptance problems, right? Whether it's a loss of identity, sense of who they are, or feeling like outsiders. And there is high, and they suffer from very high rate of suicide, and substance abuse, etc. And this was also the result of the state court not recognizing the importance of the tribal relations of Indigenous people. You know, their own culture and social standards. You know, in terms of how they raise their children. You know, what are some of their unique, um, you know, uh, set of customs, uh, they, uh, employ, um, you know, when they raise their children according to their traditions, right? So, once again, um, I think, you know, this, all of this, you know, um, facts, uh, accumulated in, um, you know, evidence that was presented at this congressional hearing. It's what the senator Tom Udall meant when he said that, "ICWA really is a recognition and signifies a change of course from our history that really mistreated Indian children and then the impact it had on tribal communities."

Next slide. So, let's look at specifically in California, in the California foster care system. So, prior to implementation of ICWA in late 1970s, again, Indian children were more than eight times likely, uh, as compared to non-Indian children to be placed in adoptive homes. And over 90 percent of California Indigenous children were subject to adoption, were placed in non-native homes. And the one of every 124 Indigenous children in California was in a foster care home

compared to rate of one in 367 for non-Indian children. And now, how does it look now in year 2018?

Um, so, Indigenous people now represent only 0.2 of the California population. So that's very small, but the really interesting fact is the state of California actually has the largest Indigenous population in the entire country. So, uh, in comparison to the population of the California, it may seem small. But what we do in California in terms of how we, uh, comply with ICWA provisions, or how our attitude toward ICWA, or whatever debates, or the arguments we may have, uh, you know, about, you know, practicing ICWA, or applying ICWA, can actually have a pretty big impact in the broader national conversations of how we need to approach ICWA. And why it is necessary for us to preserve the law, right? So, if you look at the statistics, uh, in terms of race per, um, children still, you know, the Indian children, Indigenous children are, you know, being taken into foster care system at the ratio of to, 20.7 percent. Um, and, uh, Black children the 20, slightly high, 21.8 percent. And you can see the rest on the chart yourself.

Next slide, please. So, the legislative intent, um, of the Indian Child Welfare Act was really to recognize the fact that the wholesale separation of Indian children from their family is perhaps, was the most tragic and destructive aspect of American Indian life today.” And it serves to recognize the Tribal sovereignty which is extremely important. Because ICWA really is about the Tribal sovereignty and the government-to-government relationship between the U.S government and tribal government. And, again, it's about the preservation of Indigenous families and communities and preserving Tribal and family connectedness between the children, and the parents, and family, etc.

Next slide, please. So, ICWA is a, essentially a minimum, it sets the minimum federal standards. And it's largely a procedural statute requiring inquiry, notice, active efforts, prevent removal, and providing reunification services. There's a lot of evidentiary requirements including the testimony by the expert, of our expert witness, and of course of, uh, placement preference. And just, you know, uh, very quickly to go over what each of this, um, you know, requirement means. Is that you know in inquiries it basically means that there has to be affirmative and continuing inquiry and duty to inquire where a child is, or maybe an Indian child, and that duty to inquire begins at the first contact in all referrals, or an initial investigation. So, there has to be a question such as, is there any reason to believe that a child may be an Indian child? And in terms of the notice, whenever there is a reason to know that a child may be an Indian child, um, you know, that notice has to be provided to a parent, or legal guardian, or Indian custodian, or all tribes of which the child may be a member or eligible for membership. Because, you know, when you provide a timely notice to tribe it gives them an opportunity to intervene, and get involved in the proceeding immediately, right? And in that, essentially, it's also a way of recognizing the Tribal sovereignty and, you know, their right within, uh, you know, over the, uh, the child with the Indigenous ancestry they may fall or qualify, um, under Indian Child Welfare Act. And I understand that, you know, um, that there are a lot of, uh, sort of, kind of, logistical issues that often come up. You know, uh, one of them is, you know, when we often, um, hear from social workers or, you know, you know, county, uh, welfare agencies that by the petition for the removal, um, of the child they said. You know, we have sent a notice to try, but we have not

heard from anything, from the tribe, and that was actually one of the questions that was submitted. And that is true. You know, it is true that sometimes, you know, there is a delay, uh, um, in tribes response to, um, you know, the notice they received. But there are a lot of different reasons, right? And this is not to provide my own personal excuse or justification. Because each tribe has a different way of, you know, reviewing the notice. Or they each have a different, um, you know, they have their own ICWA liaison officers, and whatnot. And then it might take a long time for them to actually do a proper investigation of, you know, or the inquiry within their own community. Where, you know, just combing through the child's relationship to the tribe, or whatnot. So, there is sometimes, uh, more often there's a delay, but that is not a, never a reason, it should never be a reason why the notice should not be sent. Or, or, um, just because the tribe does not respond immediately that, you know, somehow disqualifies ICWA, or ICWA becomes inapplicable in the situation. And, of course, you know, active efforts basically refers to a prevention of a breakup of the Indian family. There has to be an affirmative, and active, and timely efforts. That are intended primarily to maintain and reunited children with his or her family. in the safe, of course, in a safe condition. and it must be consistent with the prevailing social or cultural condition of the child tribe, right? So, that each tribe has different customs and norms and it's important the active efforts are made and are consistent with those prevailing social and cultural conditions of the child's tribe. So, the definition of the Indian child, the ICWA defines the Indian child as any unmarried person who is under age 18, or is either a member of an Indian tribe, or is eligible for membership in an Indian tribe, and is a biological child of a member of the Indian tribe. This, this part is, very, very, very critical. It's really important for all of us to remember this and understand this, is that ICWA is not based on race. It is not a race-based statute. It is based on the membership. Membership and the citizenship. And this really is fundamentally, uh, if, it is fundamentally political determination and the Tribal sovereignty to recognize the U.S congress.

And I'm going to talk a little bit more about this. When we talk about, uh, the Brackeen v. Bernhardt case. That is, um, in the Fifth Circuit, uh, court right now. I said, you know, a lot of, um, I say, kind of, think tanks or those who are opponents of ICWA. One of the most widely used argument by them is that ICWA violates ICWA protection clause, because it is a race-based statute. They have different kind of standards for the Indian children just because they're Indian, based on their race. But that is actually, that is not true. And that actually even goes the fundamental, uh, kind of, foundation of Federal Indian Law. It is about the core construction of the Federal Indian Law, or statute, including ICWA, is to recognize that U.S government has a government-to-government relationship with the Indigenous tribes, and tribal governments.

So ICWA is about recognizing the tribal sovereignty. That they have the right to handle their own familial matters including the child custody issues. And it is based on the recognition of this political relationship. Which obligates the protection of the best interests of Indigenous children. To promote the stability and security of the tribal communities, families, and the Nation. So, Brackeen v. Bernhardt is the case that is currently waiting to be decided by the fifth circuit of Court of Appeals. And the plaintiffs, the states of Texas, Indiana, Louisiana, and there are seven individuals seeking to adopt the Indian children. And the defendants are federal agencies

including: Department of Interior, for, the Secretary of Indian Affairs, a Bureau of Indian, the Bureau of Indian Affairs, BIA, and etc. And there are five main tribes that are involved in this litigation. And they are: Cherokee Nation, Oneida of Wisconsin, Quinault Indian Nation, Morongo Band of Mission Indians, and Navajo. And just, very, uh, very brief, kind of, summary of the case history, is that the Brackeens, the non-native foster parents, they sought to adopt a child, Indian child. And on her sister. they came on a little bit later. and the, both children actually squarely fall within the federal law in this ICWA definition of the Indian child. Which means that ICWA is applicable, and ICWA gets triggered, and they are required to file, follow provisions and proper protocols under the ICWA. In terms of the, you know, adoption proceeding, or in having to consult with the tribe, etc., right? And providing, doing appropriate inquiry and notice, and etc. So, then the child's biological mother and fathers in this case are enrolled member of the Navajo Nation and Cherokee Nation, respectively. And, uh, when it came to the adopt, adoption of her, uh, that the sister, uh, the Navajo Nation, uh, contested the adoption of the sister. And, uh, um, essentially, uh, you know, the state of Texas, and the Brackeens, and other families that were joined in this case, basically by the lawsuit saying, that, you know what, ICWA is unconstitutional. You know, again, is a race-based statute and, you know, it actually violates. And it does not serve the best interests of the, um, uh, Indian children. And, and, uh, you know, this has to be, uh, ruled unconstitutional, and basically have to be wiped off, right?

Next slide, please. So, quick procedural on history of this case. So, this was first filed in October 2017. So, we're still struggling with this case, uh, nearly two years and a half later. And, uh, in 2018, uh, the judge, the judge O'Connor of the Northern District of Texas, held in favor of plaintiff. And then ruled it's unconstitutional because it's a race-based, and it violates equal protection clause of the U.S constitution. And then the defendants appeal to the fifth circuit Court of Appeals. And, um, you know, to, uh, actually, was not very surprising. But still to, um, you know, many almost, you know, clearly the hundreds of the, you know, tribes, they fight and on the streets. And, you know, the all, these federal agencies, you know, they all expected that, you know, uh, Judge O'Connor's decision would be, uh, overturned. Just because it showed a very severe lack of understanding of what ICWA is. And, and, why it is not, once again, race-based Statute, right? The Fifth Circuit Court of Appeals actually, they overturned the decision in August 2019. But then the plaintiff filed and requested an inbound panel hearing, um, after it was overturned. And in January 2020, this year, the beginning of this year, the, a, court granted, uh, um, you know, their request. And a full 16-judge en banc panel at the Fifth Circuit, they re-heard entire arguments.

I personally don't understand what was, you know, why they decided to grant, um, the en banc hearing. And I think the court usually don't, you know, go into explaining, oh this is why we decided to do this. But, you know, um, according to the federal rules of Appellate procedure, the Fifth Circuit usually a, grant inbound hearing requests when proceeding involves a question of exceptional importance. And when it is just really necessary to secure or maintain uniformity of the course decision, right? So, I think just the fact that after they overturned the decision, they still decided to go ahead and grant the request and panel hearing. Really, you know, tells of the

gravity, and again, the exceptional importance, of, you know, what this case is about, and how it can impact not only the fate of ICWA, but like really whole field of Federal Indian Law. Next slide, please. So, in this case, uh, plaintiffs, they made three constitutional arguments. And those three arguments are as following. The first is that they argue that ICWA violates the equal protection clause, because ICWA is a race-based statute. And the Fifth Circuit Court when they overturned the decision, they concluded that quote, "Contrary to district court's determination, ICWA definition of "Indian child" is a political classification subject to rational basis review", not subjective strict scrutiny, under the equal protection clause. Because once again, they are very, recognizing the fact that, this is about in a political relationship and political sovereignty of the tribes, right? So, this is not, they're not, they didn't institute or implement this law because, oh, you know, they are an Indian child, so they based on their race as an Indian child. Um, or, in, Indian tribe, they are going to get a preferential treatment, or some sort of different treatment. That's not how or why this law was implemented, right? And there, and if you actually look at closely, and carefully, again, the definition of the Indian child under ICWA, it says that it's, you know, there's the age requirement. Under the age of 18. And they say that a member of an Indian tribe, um, and is eligible for the membership in the Indian tribe, and it's a biological child of a member of an Indian tribe, right? So, it really, essentially speaks to, you know, being a member of the, you know, uh, tri, of a tribe. Or, you know, and the membership being determined by the Tribal government according to their own standard, and then their own determination. So, there's nothing that is race-based kind of definition within this. But it's, again, it's about, it's about political classification that is subject to rational basis review.

The second argument the plaintiff made was that, you know, ICWA violates the anti-commandeering doctrine, because it fringes upon the state sovereignty over state child custody matters, right? That all, you know, they are butting into the, you know, the issues that should be handled by the state. And, uh, this violates the anti-commandeering doctrine, right? And the court, um, argued that, you know, ICWA really preempts of the conflicting state law, and does not violate Tenth amendment anti-commandeering doctrine. And, you know, this, this is, essentially, a case of supremacy clause, right? To the extent the provision of ICWA, and the final role required, the state courts have to enforce Federal Law and the anti-commandeering doctoring does not apply. And the Federal statutes are enforceable in state courts, too. And they, and the state judge, essentially, have to follow the Federal Law, and enforce them within the states when it comes to equality, because Federal Indian Law is really, you know, it's within the discretion of the U.S congress, right? It is a relationship between the U.S Federal government and the Tribal government, right? So, uh, it's not, uh, that, you know, that they are trying to impose, you know, the laws on the, you know, uh, the need that you cannot have your own set of regulations. But it's rather that ICWA is the Federal Law that was enacted by the U.S congress. And, uh, it's something that has to be enforced by the states on the state level.

Next slide, please. And the last of the three main arguments that was made by plaintiff is that ICWA violates non-delegation doctrine, because it improperly delegates authority to tribes to regulate non-Indians outside of Indian country. And change custody placement preferences and requires the states to follow such preferences. And the court responded to this argument by,

you know, saying that it is very well established that the tribes have sovereignty over both their members, and their territory. And for trying to exercise this authority to determine Tribal membership and to regulate, regulate, their own domestic relationship among its members. And if their, and their children, essentially, it must necessarily be able to regulate all Indian children irrespective of their location. So, it recognized the fact that it doesn't matter if children really are not, you know, living on the reservation. Or, you know, if they are from Navajo nation, but they live in Northern California. Or, you know, somewhere in New York, or etcetera. But it is, it is within their own sovereign rights to regulate, uh, the matters that have to do with their children. And, essentially, not on constitutional delegation of congressional legislative power. But rather is the incorporation of inherent Tribal authority by congress.

So, those are the three arguments that are made, and they were reiterated at the inbound hearing in January. So, it's been about, what, it's been almost a year, um, 11 months since the argument was heard, but there has, there's still no decision. So, we are still, um, waiting. Um, and, the, the, concern is that if, um, this case ends up in the U.S supreme court, and if it does, uh, as for, you know, if the Fifth Circuit Court decides that, um, it is a race-based statute? As I said, it's not going to only impact the ICWA, but the whole field of Federal Indian Law. Because such as the Indian Gaming Law, or, you know, that has with the Tribal rights over, you know, the environmental protection of their lands, and whatnot. But then their document can be made that, oh, you know, all these laws and all this provision with defender Indian Law is based on race statutes. It will violate the equal protection clause. Therefore, it should be deemed unconstitutional.

So, you know, a lot of the nationally recognized experts think that that's not going to happen. But we just never know. And we don't have clear insights to how the newly appointed supreme court justice will rule on this.

Next slide, please. And there's another, really, kind of significant case that was originally, uh, decided by the Washington State Supreme Court, right? And this is the state supreme court of, you know, the, um, Supreme Court of the State of Washington, really clarifying, and um, you know, forcefully, uh, you know, um, defining the, you know, how the state of Washington should interpret and apply the standard of reason to know. The court has, you know, reason to know that a child is an Indian child when any participant in the proceeding indicates the child has Tribal heritage. So, what quickly, what happened in this case was, there were two minor children that were removed from the CPS workers. And the mother was, uh, mother is not, and is not an enrolled member. But it was proven that she is eligible for the membership of Cherokee Nation. Um, as well as, uh, Tlingit uh, Haida Nation. And, um, and there was a circuit care hearing held. Basically, the circuit care hearing is, you know, the hearing takes place to decide whether a child can be safely and immediately returned home. So, you know, the post party would present their arguments, etc. And the judge asked very specific questions to the county social worker. Um, do these children qualify under ICWA since, uh, um, mother is eligible for membership. And it was clear to all parties that were involved, in, the mother is eligible for membership. It's just not a member yet, right? Etc. So, but the social work at the hearing

answered, “not at this point, we do not think that these children are qualified under ICWA. The mother is not enrolled, and children are not enrolled. So, the ICWA should not apply.” So, the case ended up in the Washington State Supreme Court. And they, uh, again, overturned a lower court decision, and then ruled in favor of the, you know, in the ICWA. And the reasons, and they clarify the reason to know. And, uh, these are the, some of the most powerful, um, lines that stood out to me from the, uh, the, uh, court’s decision. And says, “people involved in child custody proceedings likely will not know tribal membership or eligibility rules”, right? “Indeed, it's entirely possible that those who are not don't know”, excuse me, “those who are tribal members themselves, may not know. Tribal membership is unique to each tribe. We will not construe “reason to know” in a way that would require state agencies and parents to determine for themselves whether the child is a member or eligible for membership. To do so would undermine tribes’ exclusive authority to determine membership and would undermine the protections of the Indian Child Welfare Act itself.” And the “reason to know” standard covers a situation where tribal membership is in question. So, it's not fully determined, it's not clear, but it's a possibility due to the Tribal heritage, ancestry, or familiar political affiliation. So, in this specific case, just because social worker did not know, or have a proof that, you know, children or mother is not, um, you know, enrolled. And, you know, they, uh, but they still knew that the mother is eligible for the membership. But they still said that, oh, you know, the ICWA is not applicable here. Um, that, that, was just a, uh, incorrect application of what ICWA is designed to do. And the final designation, again, of the, whether the child is an Indian child, must then be made by the tribe itself. After it has been formally notified of the proceedings.

So, this really tells us that, you know, all the parts that are involved, they don't have to know, right? Like at that moment whether, you know, the parents or, you know, the child is, is, a member, or they're even eligible. But if there's a possibility that the member, you know, the child is a member, or eligible for membership, ICWA has to be applied. And that is, uh, is now been clarified. And that's the way in which the social workers have to practice or apply ICWA in the state of Washington. And this actually caused a, um, this was a really big deal among the practitioners of the Federal Indian Law in the state of Washington. And it was a pretty joyous occasion for all the tribes in the state of Washington. And I actually heard about it from my friend who attended this, um, you know, hearing. Um, and, uh, yeah, it was a, it was, it was quite a day for, uh, for the folks up in the Northwest.

Uh, next slide. So, um, in 2016, uh, Bureau of Indian Affairs, they released the updated guidelines for implementing the Indian Child Welfare Act. I just took a picture of that, you know, the cover page of the new guidelines. As far as the, you know, the main webpage of the, main webpage, that is dedicated to Indian Child Welfare Act. Um, in the Department of Interior Indian Affairs website. And these guidelines were also incorporated and implemented by the state of California. Can you go to next slide?

And, um, and it was implemented and updated in the California AB 3176. Um, it's essentially, a body of California Law, that incorporates the 2016 BIA's guidelines for implementing the ICWA. And, you know, I mean, you can look up the whole, kind of, legislative language of this,

you know, uh, updated law and guidelines. Um, it's, you know, easily searchable. Just can, just google it. But I, I just, you know, picked up some of the, um, any, um, you know, uh, that, you know, I just picked up the language that stood out the most to me. And one of them is WIC section 91, 319.4. And again, this, this reads that if, it is known, or if there is a "reason to know" that the child is an Indian child. And child has been ordered and detained, pursuant to the section 319. any party may request an ex parte hearing prior to disposition to present evidence to the court that emergency placement is no longer necessary to prevent imminent physical damage or harm to child. And in terms of inquiry provision, you know, what does it mean to inquire whether child is an Indian child or foreign inquiry when it's not clear. Is that it include, that such efforts include interviewing their parents, Indian custodians, and extended family members, to gather the information required. And if that doesn't work out, and you still don't have sufficient information. Or you're just, kind of, having a hard time investigating this all your own, etc. Um, you know, BIA says so in your own guidelines that you can contact us, right? Contact BIA, or even, the state department of social services, and request assistance in identifying the names and contact information of the tribes. Who is the ICWA liaison of this tribe? And I can't find the proper contact information? I, I don't like, you know, just like, I, I tried everything, and I'm just having a hard time tracking this tribe down. Or like, you know, there's a lack of communication, whatever. That, you know, you can contact the BIA or department of social services for assistance, for their help.

I mean in terms of how smoothly that type of request can be processed, I am not sure. Because I personally have not had yet, yet to experience the thing that you're contacting BIA myself to request for the assistance. But at least the language is there, right? Um, so, it's something that we can utilize. But that doesn't necessarily mean that there won't be any hiccups in the process, right? Again, you know, it might take a long time for BIA to respond. Or maybe they themselves have a hard time tracking down the tribes or equally. I mean we don't know. But I think just having the language itself, it's a pretty powerful tool. It's better to have it than not. Let's just put it that way.

And contacting the tribe or tribes, and any other person that may reasonably be expected to have information regarding the child's membership, or citizenship status, or eligibility. So, those of you who are, uh, dependency, you know, attorneys, or have been doing this work for a very long time, you probably are already, some are very familiar with this, you know, steps and processes, right? Um, you know, there's no, um, in my opinion, I don't think there's any magic way, like magical way of, um, you know, making it. Like, you know, executing this, you know, requirements and processes in some perfect manner, right? Like we all know the bureaucratic system causes lots of delay. Um, you know, phone texts, and headaches, and etc. But, um, I think ICWA is there for us to, you know, it just pushes us to try anyway. Like that's what we are required to do, right? It's time consuming. It takes a lot of energy. It takes a lot of patience-in a safe list. But, you know, that's what we are obligated to do to preserve very, the very basic provisions of ICWA. So, that's something that I think we just have to keep reminding ourselves of. Um, next slide, please.



And, lastly, um, the AB 3176 also, once again, kind of, clarifies what active efforts mean. Um, I touched on this very briefly earlier that, you know, effort of, active efforts means affirmative active thorough and timely efforts, intended primarily to maintain or reunite an Indian child with his or her family, or the tribe. If an agency is involved in an Indian child custodial proceeding, the efforts must involve assisting the parents, or Indian custodians, and, you know, uh, you know, coming up with in, a proper case plan. And really collectively developing the resources necessary to satisfy the case plan. And most importantly, or equally importantly, the maximum, to the maximum extent possible, the active efforts shall be provided in a manner that are consistent with the prevailing social and cultural conditions and way of life of the Indian child's tribe and shall be conducted in partnership with the Indian child, and then child's parents, extended family members, and custodians, and tribes. And it shall be tailored to the facts and the circumstances of the case.

So, um, you know, for me, as an immigrant myself, you know, a lot of, kind of, law that I have legal advocacy that I have engaged in, um, you know, all, have always required um a sensitivity or the understanding of the importance of providing culturally sensitive services, right? Because, you know, when you're working with the population that come from very diverse ethnic racial or cultural backgrounds, you just realize that there's no one realistic way of meeting the standard of providing the care that meets the best interests of the children, right? Each one of us have a little bit of subjective, kind of, feel on that. You know, and there's a lot of room for argument when it comes to that. But the reason that, you know, I mentioned this is that I think there's a reason why ICWA is often perceived as a gold standard when it comes to Child Welfare System, right? That if you want to understand why this particular family is struggling. Or the, why it is never a good idea for a child to grow, grow up in a family that has no understanding of the culture background-where this child was raised or comes from. It actually, over a long period of time, it like has very detrimental impact on the child sense of who they are-where they come from. And that the consequences might not become immediately apparent. But it does have a huge, um, you know, it just, there's a huge impact on how child abuse, her or him, or themselves, when they grow up. And I think it's really important, I think it's really fantastic, that the Indian Child Welfare Act really focuses on the importance of, you know, employing and understanding that each tribe's social and cultural conditions. Because, again, if we look at why ICWA was enacted was because as a consequence of children being separated. There were whole destruction of the social and culture understanding. Or, you know, the communal norms of the Indian community. So, um, I don't think these issues can ever be approached in a complete like, black or white, manner when we are understanding the specific family situation, situations. Or why there was initial removal of the child. But I think having said that we just have to continue to wrestle with, um, you know, our understanding of why ICWA was enacted. And why, uh, ICWA exists. And why there's hundreds and thousands of advocates and lawyers and, uh, you know, congress, uh, uh, people they're trying to, uh, ICWA as, as the, as the law of the land.

Next slide. So, some of the Bay Area of the Native American or Indigenous community organizations, or groups who are actively working on providing whether social services, are meeting the needs of the families. Who are working with the California Department of Social

Services to make sure the ICWA is properly, you know, complied with, etc. Are, you know, there is a Bay Area Collaborative of American Indian resources. And I know that, a, Vida, who introduced me in the beginning of this presentation. Um, you know, attend this meeting if you want more information, you know, I'm sure the, Vida, will be happy to provide that. Um, you know, there's a very fantastic collaborative where all these different Indigenous groups, social workers, and non-Indigenous allies, and advocates, also have a seat at the table to discuss, you know, what is the can, that we can all do better to meet the needs of the Indigenous families of the Bay Area. And there's of course Native American Health Center. And the American Indian Child Resource Center, located in Oakland, California. And the California Consortium for Urban Indian Health, located in the Presidio of San Francisco. And, you know, I think it's important to remember that state of California have their own Office of Tribal Affairs. You know, they, and they continue to conduct training for, uh, county social workers and non-profit organizations, or the children's advocates about, um, you know, what ICWA is. And the more nitty-gritty details and requirements under ICWA. Um, and, uh, um, you know, I'm sure that all of you can contact them, uh, if you want more like, you know, more extensive, and the training that is solely dedicated to ICWA provisions. Um, I have attended actually a couple of them and they're really fantastic, and I have learned a lot from their training.

Next slide. Okay, so, this is the last slide, but I do want to address some of the questions that were submitted in advance. Um, Amanda, I think you can now go back to like, I guess, exit the full screen. I'm also going to go ahead and show my, turn on my camera.

So, first question. Um, is, “are there a noticeable pattern in history of family separation and what's been happening more recently at the U.S-Mexico border? Or other types of separation connected to immigration?”

I think, uh, the first half of my presentation hopefully provided an answer to this. If you look at the, again, history of the family separation throughout the history. Starting with the Slavery Era, to, you know, Japanese Internment Camp, and now in the U.S-Mexico border, it is, uh, I think one could make a very strong argument, or case, that there is a pattern. You know, and there is often this pattern, or policy. Is, um, you know, entangled, and a very severe critique of racial exclusion. Um, you know, we don't have to agree with it, but that is often one of the reasons that, uh, or one of the, um, biggest argument that put forward by many immigrant and human rights activists, and policymakers. That this is, essentially, to keep, you know, non-white immigrants out of the United States. Or the federal government's wish to control the, um, you know, the, preserve the, uh, certain ethnicities, uh, you know, um, existence in the country over the, uh, the people of different ethnicities. Um, and I think, you know, all of us as lawyers, and those of us who practice civilized laws, I think it's just important for us to study these histories very carefully, and we can all come to our own conclusion. And, uh, but I think these patterns are, uh, hard to miss, right? Um, they're, they're, the facts speak for themselves. So, um, hopefully, um, you know, the sort of, kind of, advocacy, or the debate, if necessary, will continue, so we don't lose the sight of what is going on.

And there was a question about “How does ICWA apply in private adoption, the termination of parents’ rights cases? If ICWA applies in the private adoption cases, and how are the reunification services are enforced?”

And answer is yes. Again, you know, the purpose of the ICWA, or the legislative intent by congress to enact ICWA, was to stop harmful consequences and unwarranted removal of the Indian children, and being placed in the non-Indian families, right? So, it does apply in both, uh, privately arranged, for the agency arranged adoption proceedings. and you definitely would, you would have to consult with your attorney, uh, to learn more about such, you know, kind of requirements. And different processes you have to go through, um, to make sure that you do not violate the ICWA provisions. And I think in terms of the reunification efforts I touched upon briefly earlier that they require for the social workers, and also the collaborative effort by the parents, and children. And, you know, strives to, to come up with, you know, planning, um, such as, family counseling, or learning more about the cultural practices of the tribe the child belongs to, or may be eligible for the membership. And they just make sure that, you know, you do the best you can to the best of your ability to, uh, learn about those customs. To, uh, you know, continue to engage in services. Uh, to reserve the, whatever conflict of problems that were, uh, that, you know, um, first, um, which were the, you know, main reasons why the child may have been removed in the first place, right? So, I think it requires efforts by all the parties that are involved. And, um, you know, social workers usually would review them, county social worker, and what kind of efforts are being made. And if you're a parent, or the child's attorney, and you feel as though this unification services, the efforts that are being, supposed to be provided by social workers also not being sufficiently met, there's something you can talk upon with your attorney, or have a conversation with the social worker as well.

I think it's always the best to talk about the problems and trying to resolve them, rather than, um, you know, um, having to litigate it, um, at the different hearings, but, um, I think that's maybe the kind of, aspirational goal, or standard that we can ask that, to make sure that we all do have the best interest of the Indian children in our mind. And, um, what else? Information about services for Native Americans in California including location and type of services. I think my previous slide, uh, provided with information of a different local Native American organizations that I mentioned. Um, I think, I mean these are some of the very key, uh, leading, uh, community organizations that not only working within, among themselves, but they have a very strong networking kind of connection with the National Native American rights organizations, as well. And, you know, you can always learn something new from them. They have tons of information to pertain, both, to social workers, and the lawyers, and whatnot. So, just, you know, utilize their, um, you know, their expertise, and, uh, you know, what they can share with you. Um, and, uh, just yeah, I mean just reach out to them and, uh, and start a conversation.

Um, “What can parent attorneys do to help make sure that ICWA obligations are meaningfully met by the department, not just Pro Forma?”

This question seems to be pretty straightforward question, but also, I think it's probably one of the most difficult questions that we can, you know, we should struggle with. Um, you know, the laws are there, but that doesn't mean there aren't loopholes, or there aren't problems executing those provisions. Um, you know, it's people who have to, you know, who come up with these laws. And it's essentially people who have to comply with, you know, this, um, provisions. And, you know, it's, it's sometimes, it's, I don't know, I think the Cal, State of California often, you know, it is proven that for whatever reason the state of California has the hardest time complying with ICWA provision order. They have, I say, very strong protective ICWA provisions. And, um, I have to say that I think there's still a huge, or large level of ignorance, when it comes to ICWA among judges, and attorneys, and then advocates. You know, people don't keep up with updated provisions, or laws. Um, you know, sometimes they don't make enough efforts to learn about those laws. Um, or they just try to, uh, to put it more plainly, and bluntly, just oftentimes, just kind of trying to take an easy way out of it. And, um, I think that should not be the case.

So, I think, you know, this is not something that is going to change unless we each, we hold each other accountable, right? You just have to call it out when you see that, you know, the party is not, uh, properly complying with ICWA provisions. And, uh, it's something you always have to document, and just keep bringing it up. Um, may sound like a broken record, but I think that's personally what it takes. But, you know, I'm still pretty new, so, I might have a different opinion, maybe five or ten years from now on, but I think that's all I can share with you at this moment.

Hyun-mi, if I may interject. I think, you know, some of the confusion may be, um, with understanding concepts like Indian citizenship, or, um, you know, uh, Tribal sovereignty, and things like that. So, we've been working on creating different materials that will help, uh, prevent any confusion. I know we've gotten, uh, some feedback and questions in our, uh, chat box, and Q&A box. Um, about wanting to understand more about these things. So, in the chat box I have inserted some links, um, to both, the CALSWEC link, where we are, our unit is, uh, developing different ICWA modules. Um, that really break down, um, the information into, uh, different subtopic areas to kind of ease, um, understanding with some of the confusion about some of these concepts. Because we're not taught a lot of this information in our history classes, you know, in, in high school, and college. So, and this helps, uh, provide clear understanding for that. And then, also, our website link contains, um, much of this information about a Federal Indian Law to provide some, a greater understanding about this. And, um, and, other, you know, ICWA job aids that can help, um, as you kind of move along within its cases.

Thank you, Vida.

Yeah, so, I think we're near the end. Do you have any, um, last thoughts before I close it out?

No. I just want to thank all the attendees for being here, and please do not hesitate to contact me at the, you know, you can call me, or email me, and I would be happy to address any other questions you may have. Or maybe, you know, have other opportunities to, um, you know, work with different groups, or organizations, to protect ICWA. So, thanks. Thanks everyone.

Thank you. So, thank you everyone for attending today's webinar. We hope you have a better understanding of Family Separation in the Indian Child Welfare Act. If you have any comments or questions please feel free to reach out, and I can provide feedback to Hyun-mi. Or, um, you can contact her directly, and have a wonderful day.

14:03 NOW PLAYING SUB) Eating Conveyor Belt