Nos. 21-376, 21-377, 21-378, and 21-380

In The
Supreme Court of the United States

DEB HAALAND,
SECRETARY OF THE INTERIOR, *et al.*,
Petitioners,

v.

CHAD EVERET BRACKEEN, *et al.*,
Respondents.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF OF AMERICAN ACADEMY OF PEDIATRICS AND AMERICAN MEDICAL ASSOCIATION AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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CHEROKEE NATION, *et al.*,

Petitioners,

v.

CHAD EVERET BRACKEEN, *et al.*,

Respondents.

TEXAS,

Petitioner,

v.

DEB HAALAND,
SECRETARY OF THE INTERIOR, *et al.*,

Respondents.

CHAD EVERET BRACKEEN, *et al.*,

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FEDERAL CASES

Brackeen v. Haaland,
994 F.3d 249 (5th Cir. 2021)
(op. of Dennis, J.) 8

Mississippi Band of Choctaw Indians v. Holyfield,
490 U.S. 30 (1989) 8, 25

FEDERAL STATUTES

25 U.S.C. § 1601(1) 10

25 U.S.C. §§ 1901(4)-(5) 21

25 U.S.C. § 1902 23

25 U.S.C. § 1903(2) 24

25 U.S.C. § 1915(a) 23

42 U.S.C. § 671(a)(29) 19

42 U.S.C. § 675a(a)(1) 19, 23

Pub. L. 110-351, Title I, § 101(a),
122 Stat. 3950 19

Pub. L. 113-183, § 112, 128 Stat. 1926 19

Pub. L. 115-123, Title VII, § 50713,
132 Stat. 245 19

88 Stat. 1910 22

REGULATIONS

25 C.F.R. § 23.132(e) 25

25 C.F.R. § 25.132(e) 25

OTHER AUTHORITIES

AFCARS Report, "U.S. DEP'T OF HEALTH & HUMAN SERVS., ADMIN. FOR CHILDREN & FAMILIES" (Oct. 4, 2021) 18

James Allen *et al.* "Multi-Level Cultural Intervention for the Prevention of Suicide and Alcohol Use Risk with Alaska Native Youth: a Nonrandomized Comparison of Treatment Intensity," 19 PREVENTION SCI. 174 (2018) 11-12

American Indian Policy Review Comm'n, Final Report (May 17, 1977), available at https://eric.ed.gov/?id=ED164229 22

"The Destruction of American Indian Families" (S. Unger ed. 1977) 6, 21, 22

Am. Med. Ass'n, *Addressing the Longitudinal Healthcare Needs of American Indian Children in Foster Care* D-350.977, available at https://policysearch.ama-assn.org/ policyfinder/detail/D-350.977?uri=%2FAMADoc%2F directives.xml-D-350.977.xml 2

Annie E. Casey Foundation, "Stepping Up for Kids" (2012), https://www.aecf.org/resources/stepping-up-for-kids 15

Shaquita Bell, et al., "Caring for American Indian and Alaska Native Children and Adolescents," 147 PEDIATRICS 3 (Apr. 2021) 11

Amy Bombay, et al., *The intergenerational effects of Indian Residential Schools: Implications for the concept of historical trauma*, 51(3) TRANSCULTURAL PSYCHIATRY 320 (2014) 9

Raymond Cross, "American Indian Education: The Terror of History and the Nation's Debt to the Indian People," 21 U. ARK. LITTLE ROCK L. REV. 941 (1999)............................ 6

Andrea C. Curcio, "Civil Claims for Uncivilized Acts: Filing Suit Against the Government for American Indian Boarding School Abuses," 4 HASTINGS RACE & POVERTY L.J. 45 (2006)...................................... 6, 7

M. Dong *et al.*, "The interrelatedness of multiple forms of childhood abuse, neglect, and household dysfunction," 7 CHILD ABUSE AND NEGLECT 771 (2004)............ 13

Cindy L. Ehlers *et al.*, “Measuring historical trauma in an American Indian Community Sample: Contributions of substance dependence, affective disorder, conduct disorder and PTSD,” 133 DRUG AND ALCOHOL DEPENDENCE 1 (Nov. 2013) 14

Giorgio Falgares *et al.*, “Attachment Styles and Suicide-Related Behaviors in Adolescence: The Mediating Role of Self-Criticism and Dependency,” 8 FRONTIERS IN PSYCHIATRY 36 (2017) 11

“Federal and State Services and the Maine Indian,” Me. Advisory Comm. to the U.S. Comm’n on Civil Rights (Dec. 1974), available at https://digitalcommons.usm.maine.edu/ me_collection/22/ 22

V.J. Felitti *et al.*, “Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults, the Adverse Childhood Experiences (ACE) Study,” 14 AM. J. PREVENTIVE MEDICINE 245 (1998) 12

Matthew L.M. Fletcher & Wenona T. Singel, “Indian Children and the Federal-Tribal Trust Relationship,” 95 NEB. L. REV. 885 (2017) 7

Heather Forkey *et al.* “Trauma-Informed Care,” 148 PEDIATRICS (2):e2021052580 (Aug. 1, 2021)... 13

Brenda Jones Harden, "Safety and Stability for Foster Children: A Developmental Perspective," 14 The Future of Children 31 (2004) 26

M.A. Herne *et al.*, "Suicide mortality among American Indians and Alaska natives, 1999-2009," 104 AM. J. PUBLIC HEALTH S3336 (2014) 11

Andrew S. Garner and Michael Yogman, "Preventing Childhood Toxic Stress: Partnering with Families and Communities to Promote Relational Health," 148(2) PEDIATRICS e20211052582 (Aug. 2021) 12

Lorie M. Graham, "'The Past Never Vanishes': A Contextual Critique of the Existing Indian Family Doctrine," 23 AM. INDIAN L. REV. 1 (1998) 5

H. Rep. 95-1386 (1977) 22, 23, 24

Hearings on S. 1976 Before the Senate Select Committee on Indian Affairs, S. Hrg. 100-845 (1988) 5

"Indian Adoption Project Increases Momentum," Bureau of Indian Affairs (Apr. 18, 1967), at https://www.bia.gov/as-ia/opa/online-press-release/indian-adoption-project-increases-momentum 8

Indian Child Welfare Act of 1977: Hearing on S. 1214 Before the Select Comm. on Indian Affairs, 95th Cong. 539-40 (1977) 8

Indian Health Service, "Basis for Health Services," at https://www.ihs.gov/newsroom/factsheets/basisforhealthservices/ (Jan. 2015) 10

Indian Health Service: Relief Funding and Agency Response to COVID-19 Pandemic," Gov't Accountability Office, No. GAO-22-104360 (Mar. 2022) 10

Indian Health Service: Spending Levels and Characteristics of IHS and Three Other Federal Health Care Programs," Gov't Accountability Office, No. GAO-19-74R (Dec. 10, 2018) 10

Amy Jantz *et al.*, "The Continuing Evolution of State Kinship Care Policies," Urban Inst. Discussion Paper No. 02-11 (Dec. 2002) 18

Veronnie F. Jones *et al.*, "Pediatrician Guidance in Supporting Families of Children Who Are Adopted, Fostered, or in Kinship Care," 146 PEDIATRICS 1 (Dec. 2020) 16, 17, 18

James Knibbe-Lamouche, *Culture as a Social Determinant of Health*, NATIONAL LIBRARY OF MEDICINE, NATIONAL CENTER FOR BIOTECHNOLOGY INFORMATION (Nov. 14, 2012), at https://www.ncbi.nlm.nih.gov/books/NBK201298/ 19

M.P. Koss *et al.*, "Adverse childhood exposures and alcohol dependence among seven Native American tribes," 25 AM. J. PREV. MED. 238 (2003) 13

Linda J. Lacey, "The White Man's Law and the American Indian Family in the Assimilation Era," 40 ARK. L. REV. 327 (1986) 20

Lewis Meriam, "The Problem of Indian Administration," 15, 346 (1928) 8

Ass't Sec'y for Indian Affairs Bryan Newland, "Federal Indian Boarding School Initiative Investigative Report," (May 2022) 7, 8, 14

David M. Rubin *et al.* "Needs of Kinship Care Families and Pediatric Practice," 139 PEDIATRICS e20170099 (Apr. 1, 2017) 16, 18

David M. Rubin *et al.*, "The Impact of Kinship Care on Behavioral Well-Being for Children in Out-of-Home Care," 162 ARCH. OF PEDIATRIC ADOLESCENT MED. 550 (2008) 17, 26

Sakai C, Lin H, Flores G., "Health Outcomes And Family Services In Kinship Care: Analysis Of A National Sample Of Children In The Child Welfare System." 165(2) ARCH PEDIATR ADOLESC MED. 159 (2011) 18

Anita Sinha, "A lineage of family separation," 87 BROOKLYN L. REV. 445 (2022) 8, 21, 22

Jack P. Shonkoff & Andrew S. Garner, "The Lifelong Effects of Early Childhood Adversity and Toxic Stress," 129 PEDIATRICS e232 (Jan. 2012) 12

U.S. ADMIN. FOR CHILDREN & FAMILIES, CHILDREN'S BUREAU, "Impact of Kinship Care on Permanency Outcomes," https://www.childwelfare.gov/topics/permanency/relatives/impact/ 17, 18

U.S. Dep't of Education, "Status and Trends in the Education of American Indians and Alaska Natives: 2008," No. NCES 2008-084 (Sept. 2008) 13

Lauren van Schilfgaarde & Brett Lee Shelton, "Using Peacemaking Circles to Indigenize Tribal Child Welfare," 11 COLUM. J. RACE & L. 681 (2021) 20, 24

Vandervort, Frank E., et al., "Building Resilience in Foster Children: The Role of the Child's Advocate," 32 CHILD. LEGAL RTS. J. 1 (2012) 24

Les B. Whitbeck *et al.*, "Conceptualizing and Measuring Historical Trauma Among American Indian People," 33 AM. J. OF COMMUNITY PSYCHOLOGY 119 (2004)................. 14

Les. B. Whitbeck *et al.*, "Depressed Affect and Historical Loss Among North American Indigenous Adolescents," 16 AM. INDIAN/ALASKA NATIVE MENTAL HEALTH RESEARCH 16 (2009) 14, 15

Marc Winokur *et al*. "Kinship Care for the Safety, Permanency, and Well-being of Children Removed from the Home for Maltreatment: A Systematic Review," Campbell Systematic Reviews (Mar. 3, 2014), https://doi.org/10.4073/csr.2014.2 16

INTERESTS OF THE *AMICI CURIAE*[1]

The American Academy of Pediatrics ("AAP") is the largest professional association of pediatricians in the world. AAP represents 67,000 primary care pediatricians, pediatric medical subspecialists, and surgical specialists who are committed to the attainment of optimal physical, mental, and social health and well-being for all infants, children, adolescents, and young adults. In its dedication to the health of all children, AAP strives to improve health care access and eliminate disparities for children and youth involved in the child welfare system. AAP works to ensure that public policies support the thriving of all children and youth and their families, including American Indian and Alaska Native ("AI/AN") children.[2]

AAP regularly publishes peer reviewed studies about pediatric health, including about the health of children in foster care and the health of AI/AN children. AAP chapters and districts also engage in regional, state, and local efforts to address the physical, mental, social, and emotional health needs of adolescents and young adults in foster care.

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[1] No counsel for a party authored this brief in whole or in part, and no person or entity, other than *amici curiae*, their members, and their counsel, made a monetary contribution to its preparation or submission. All parties have consented in writing to this filing.

[2] "AI/AN" is the term commonly used in scientific and medical literature and encompasses "Indian" as defined in the Indian Child Welfare Act.

As the nation's leading association of pediatricians, AAP is uniquely placed to inform the Court about the health needs of the children who are supported by the Indian Child Welfare Act ("ICWA") and would be harmed by a decision limiting its content or effectiveness. AAP submits this brief to provide the Court important context about the role of ICWA in protecting and promoting the health and wellbeing of AI/AN children.

The American Medical Association ("AMA") is the largest professional association of physicians, residents, and medical students in the United States. Additionally, through state and specialty medical societies and other physician groups seated in its House of Delegates, substantially all physicians, residents, and medical students in the United States are represented in the AMA's policy-making process. The AMA was founded in 1847 to promote the art and science of medicine and the betterment of public health, which remain its core purposes. AMA members practice in every medical specialty and in every state. The AMA recognizes the Indian Child Welfare Act of 1978 as a model in AI/AN child welfare legislation. *See* AMA, *Addressing the Longitudinal Healthcare Needs of American Indian Children in Foster Care* D-350.977, available at https://policysearch.ama-assn.org/policyfinder/detail/D-350.977?uri=%2FAMADoc%2Fdirectives.xml-D-350.977.xml. The AMA joins this brief on its own behalf and as a representative of the Litigation Center of the American Medical Association and the State Medical Societies. The Litigation Center is a coalition among the AMA and the medical societies of each state and the District of Columbia. Its purpose

is to represent the viewpoint of organized medicine in the courts.

SUMMARY OF THE ARGUMENT

Tribes are, in a real way, extended families. AI/AN children have supportive connections not only with parents, and not only with their near relatives, but with a broader community that provides care and affirmative connections for nourishing growth. These connections are invaluable for the development of AI/AN children.

Yet federal and state policies sought, over decades, to destroy AI/AN families and communities. Through the infamous federal and state boarding school network, and through persistent policies encouraging the removal of AI/AN children from their parents by needless fostering outside their Tribes, governments have systematically separated AI/AN children from their families and Tribes. AI/AN adults and children alike experience the intergenerational pain of lost connections and the trauma of historical loss.

AI/AN children suffer disproportionately from a wide variety of challenges to their health and wellbeing, and suffer a high rate of traumatic and stressful experiences, such as neglect. These childhood obstacles to wellbeing have long-term impacts on development and mental health, including an increased burden of disease in adulthood and harm across generations. These persistent health inequities are the direct result of the historical trauma AI/AN communities have experienced from

centuries of harmful federal and state policies toward them.

ICWA operates as an important tool to combat the effects of these policies. A key strategy for mitigating the loss of connections is to ensure that, to the extent possible, when children are removed from their parents, they stay within their extended families and communities. For this reason, kinship care is now widely recognized, including in general federal policy, as a preferable approach in child welfare for children of all backgrounds. ICWA was perhaps the earliest policy promoting kinship care, and it is a gold standard in child welfare law. Its core provision regarding adoptions simply instructs that a child's extended family is the first preference for adoption, followed by members of the child's Tribe. That second preference simply incorporates a broader concept of kinship, because in many Tribal communities, familial relationships extend beyond the first- and second-degree connections conventionally regarded as "family." Family, in many Tribal communities, extends to a clan and then out to the child's whole Tribe that shares cultural and religious values and emotional ties.

Congress's enactment of ICWA was a direct response to the problems caused by the then-prevailing policies of forced assimilation through the removal of AI/AN children from their families, communities, and cultures. ICWA has been crucial for promoting the health, development, and wellbeing of AI/AN children; invalidating the statute would, conversely, cause significant damage to child health, development, and wellbeing.

ARGUMENT

I. TRIBAL RELATIONS SERVE A ROLE SIMILAR TO EXTENDED FAMILY NETWORKS IN NON-AI/AN COMMUNITIES.

AI/AN Tribes have unique, rich, and meaningful cultures that involve strong and vibrant community connections. Tribal community structures are based around circles of connection, kinship, and care. "For many Native American nations, 'family' denotes extensive kinship networks that reach far beyond the Western nuclear family. It is a 'multi-generational complex of people and clan and kinship responsibilities' that extends to past and future generations." Lorie M. Graham, "'The Past Never Vanishes': A Contextual Critique of the Existing Indian Family Doctrine," 23 AM. INDIAN L. REV. 1, 4 (1998). AI/AN people "have two relational systems. . . . They have a biological relational system, and they have a clan or band relational system." Indian Child Welfare Amendments: Hearings on S. 1976 Before the Senate Select Committee on Indian Affairs, S. Hrg. 100-845, p.97 (1988) (statement of Evelyn Blanchard, vice president of the National Indian Social Workers Association). AAP members regularly encounter these broader familial relationships when they treat AI/AN children. The supportive relationships and positive childhood experiences contributed by these community/family connections are an important piece of the wellbeing and development of AI/AN children. As pediatricians, AAP members understand that the key to healthy growth is to have relationships that build attachment, healing, and resilience. There are major benefits to

identification and strong linkage to one's own community—positive self-concept, internal motivation and optimism, and social connectedness, which all contribute to success in adulthood.

II. OVER DECADES, FEDERAL AND STATE GOVERNMENTS SOUGHT TO DESTROY AI/AN FAMILIES.

For nearly a century beginning after the Civil War, AI/AN children were sent to government-run or state-sponsored boarding schools, far from home, to be educated and "reformed" away from their families and communities. *See generally* Raymond Cross, "American Indian Education: The Terror of History and the Nation's Debt to the Indian People," 21 U. ARK. LITTLE ROCK L. REV. 941 (1999). Children were sometimes forcibly removed from their families to be sent to these schools. *See, e.g.*, "The Destruction of American Indian Families," 18-21 (S. Unger ed. 1977). Even without such removals, attendance was effectively compelled, by a combination of the legal requirement that parents send their children to school and the policy that made these schools available mainly in the form of remote, assimilationist boarding schools. Andrea C. Curcio, "Civil Claims for Uncivilized Acts: Filing Suit Against the Government for American Indian Boarding School Abuses," 4 HASTINGS RACE & POVERTY L.J. 45, 57-58 (2006). Through the 1930s, "almost half of all American-Indian children enrolled in school were forced to leave home in order to go to government-run boarding schools." *Id.* at 57. As late as 1967, 83% of Navajo children under nine were at a government-run boarding school. *Id.* at 58.

These schools were designed explicitly to destroy AI/AN communities and cultures. The founder of the original model school, the Carlisle Indian School, put it plainly: "Kill the Indian in [a child], and save the man." Matthew L.M. Fletcher & Wenona T. Singel, "Indian Children and the Federal-Tribal Trust Relationship," 95 NEB. L. REV. 885, 940 (2017).

The schools were military in style, with children organized into companies with certain children selected as "sergeants" and "corporals." Ass't Sec'y for Indian Affairs Bryan Newland, "Federal Indian Boarding School Initiative Investigative Report," at 52 (May 2022) ("*Newland Report*"). Children were heavily engaged in manual, industrial labor, such as lumbering and blacksmithing. *Id.* at 60. The schools employed "[s]ystmatic identity-alteration methodologies." *Id.* at 53. Children were only permitted to speak English, not their native languages, and they were taught to disparage the traditions, practices, and values of their families, often times punished for practicing their culture and traditions. Curcio, 4 HASTINGS RACE & POVERTY L. REV. at 60. The schools erased AI/AN children's birth names and replaced them with "English" names. *Newland Report* at 53. These rules—against speaking a child's native language, using a child's original name, practicing the child's culture, etc.—were enforced with severe techniques including flogging and whipping, food deprivation, and solitary confinement. *Id.* at 54. Children often ran away, and when caught were subjected to mock courts martial conducted by the older children. *Id.* at 55. Conditions were often dire, with "malnourishment," "overcrowding," and "lack of health care." *Id.* at 56.

"[P]hysical, sexual, and emotional abuse" at the hands of school staff was "[r]ampant." *Id.*

The boarding school system declined gradually, over several decades, *id.* at 6, after a 1928 report acknowledged that the policy of "remov[ing] the Indian child[ren] as far as possible" from their families was deeply flawed, and had "largely disintegrate[d] the [Indian] family." *Brackeen v. Haaland*, 994 F.3d 249, 283 (5th Cir. 2021) (op. of Dennis, J.) (quoting Lewis Meriam, "The Problem of Indian Administration," 15, 346 (1928)) (second and fourth alterations in original). But the removal of AI/AN children continued, perpetrated by state child welfare systems.[3] As of the mid-1970s, "25 to 35% of all Indian children had been separated from their families and placed in adoptive families, foster care, or institutions," *id.* at 32; *see also* Anita Sinha, "A lineage of family separation," 87 BROOKLYN L. REV. 445, 459 (2022) (providing additional detail on the surveys that generated the figure), a rate 20 times higher than for non-AI/AN children. Indian Child Welfare Act of 1977: Hearing on S. 1214 Before the Select Comm. on Indian Affairs, 95th Cong. 539-40 (1977). States and private adoption agencies both participated in these out-adoptions through the "Indian Adoption Project," with at least tacit approval from the Bureau of Indian Affairs. *See, e.g.*, Press Release, "Indian Adoption Project Increases Momentum," Bureau of Indian Affairs (Apr. 18, 1967), at https://www.bia.gov/as-ia/opa/online-press-release/indian-adoption-project-increases-momentum (praising States "rank[ing]

[3] The Court surveyed this history in *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30 (1989).

highest . . . in placing Indian children for adoption in non-Indian homes").

Such efforts to destroy native cultures cause trauma that reverberates across generations. Studies of the similar boarding school system in Canada show that "the more generations that attended" the boarding schools, "the poorer the psychological well-being of the next generation." Amy Bombay, et al., *The intergenerational effects of Indian Residential Schools: Implications for the concept of historical trauma*, 51(3) TRANSCULTURAL PSYCHIATRY 320 (2014). Children and families today are experiencing the effects of the boarding schools and of the program of separating AI/AN children from their parents. ICWA is an important policy to reduce and mitigate that intergenerational trauma, by providing tools to preserve AI/AN cultures and communities rather than destroy them.

III. HISTORICAL TRAUMAS INFLICTED ON AI/AN COMMUNITIES BY FEDERAL AND STATE POLICIES AFFECT THE HEALTH OF AI/AN CHILDREN TODAY.

AAP and AMA members are professionally focused on the health and wellbeing of children. AAP maintains a committee of preeminent national experts on the issue of AI/AN health, and AMA develops policy through a deliberative process including medical professionals from around the country. At AAP and AMA, these experts develop policy on such topics and advocate for policies that redress the health inequities their patients face as a result of longstanding federal and state policies.

AAP and AMA members frequently encounter inequities in the health care of AI/AN children despite the obligations that the United States undertook to many Tribes. "Treaties between the United States Government and Indian Tribes frequently call for the provision of medical services, the services of physicians, or the provision of hospitals for the care of Indian people." Indian Health Service, "Basis for Health Services," at https://www.ihs.gov/newsroom/factsheets/basisforhealthservices/ (Jan. 2015); *see also* 25 U.S.C. § 1601(1) ("Federal health services to maintain and improve the health of the Indians are consonant with and required by the Federal Government's historical and unique legal relationship with, and resulting responsibility to, the American Indian people"). The federal government, through the Indian Health Service, is the primary source of comprehensive medical care for millions of AI/AN people. Yet federal efforts to fulfill these promises are chronically underfunded. For example, in 2017, the Indian Health Service spent, per patient population, less than half of what Medicaid spends per patient. "Indian Health Service: Spending Levels and Characteristics of IHS and Three Other Federal Health Care Programs," Gov't Accountability Office, No. GAO-19-74R, p.8 (Dec. 10, 2018).[4]

Partly because of the deficiencies in the federal health care system for AI/AN people, AI/AN children

[4] The Service's recent budgets have been comparable to its 2017 funding except that, like many health care agencies, it received extra funding to deal with the COVID-19 pandemic. "Indian Health Service: Relief Funding and Agency Response to COVID-19 Pandemic," Gov't Accountability Office, No. GAO-22-104360, pp. 4-5 (Mar. 2022).

face a uniquely high incidence of health challenges and negative health outcomes.

AI/AN children with special health care needs are more likely than others to have multiple functional difficulties, and at the same time, are less likely to receive primary care targeted for their needs. Shaquita Bell, et al., "Caring for American Indian and Alaska Native Children and Adolescents," 147 PEDIATRICS no. 4, p.3 (Apr. 2021) ("*AAP Statement*"). Funding is a barrier, as is access to specialized medical care and pediatric rehabilitation services, particularly for AI/AN children living in rural areas. *Id.*

Suicide is 50% more common among AI/AN teenagers than others. *Id.* (citing data from the Centers for Disease Control). In some Tribes, the youth suicide rate is seven times higher than even that elevated rate. M.A. Herne *et al.*, "Suicide mortality among American Indians and Alaska natives, 1999-2009," 104 AM. J. PUBLIC HEALTH S3336 (2014). Disruption of family relationships is a significant risk factor for suicide. Giorgio Falgares *et al.*, "Attachment Styles and Suicide-Related Behaviors in Adolescence: The Mediating Role of Self-Criticism and Dependency," 8 FRONTIERS IN PSYCHIATRY 36 (2017). And the family and Tribal ties in AI/AN communities can be an important buffer against suicide risk. Indeed, suicide prevention strategies that are culturally centered have been successfully used in several AI/AN communities to reduce youth suicide behaviors. James Allen *et al.*, "Multi-Level Cultural Intervention for the Prevention of Suicide and Alcohol Use Risk with Alaska Native

Youth: a Nonrandomized Comparison of Treatment Intensity," 19 PREVENTION SCI. 174 (2018).

More broadly, AI/AN youth are disproportionately likely to experience adverse childhood experiences, such as neglect, incarceration of family members, and malnutrition. This disproportionate exposure to adverse experiences is not the function of a deficiency in AI/AN culture or of the communities in which AI/AN children are born, but a continued expression of the deleterious effects of federal and state policies. ICWA is part of a policy framework designed to redress these harms and promote the wellbeing of AI/AN families. These adverse experiences can result in traumatic stress, particularly if they are not buffered by safe, stable, and nurturing relationships. It is now reasonably well established that the occurrence of adverse childhood experiences in a person's past is linked to adult mortality and disease. V.J. Felitti *et al.*, "Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults, the Adverse Childhood Experiences (ACE) Study," 14 AM. J. PREVENTIVE MEDICINE 245 (1998). If prolonged or persistent, this traumatic stress may result in physiological disruptions that can undermine the development of the body's stress response systems and affect the developing brain, cardiovascular system, and immune system. Jack P. Shonkoff & Andrew S. Garner, "The Lifelong Effects of Early Childhood Adversity and Toxic Stress," 129 PEDIATRICS e232 (Jan. 2012); *see also* Andrew S. Garner and Michael Yogman, "Preventing Childhood Toxic Stress: Partnering with Families and Communities to Promote Relational Health," 148(2) PEDIATRICS e20211052582 (Aug. 2021). Taken

together, these conditions can affect a child's development and have long-term health consequences into adulthood. Heather Forkey *et al.*, "Trauma-Informed Care," 148 PEDIATRICS (2):e2021052580 (Aug. 1, 2021). For example, increased exposure to adverse childhood experiences, particularly to a broader range of adverse experiences, forecasts a significantly increased risk of heart disease, severe obesity, or diabetes as an adult. M. Dong *et al.*, "The interrelatedness of multiple forms of childhood abuse, neglect, and household dysfunction," 7 CHILD ABUSE AND NEGLECT 771 (2004). And AI/AN adults have been found to have suffered multiple adverse experiences in their childhoods at a rate five times higher than non-AI/AN adults. M.P. Koss *et al.*, "Adverse childhood exposures and alcohol dependence among seven Native American tribes," 25 AM. J. PREV. MED. 238 (2003).

To address these health inequities, it is important to understand what causes them. These significant health burdens are, to be sure, partly the consequence of economic conditions, which are themselves the consequences of federal and state policies. AI/AN children experience poverty much more often than the broader population; indeed more than one third of AI/AN families live in poverty. "Status and Trends in the Education of American Indians and Alaska Natives: 2008," U.S. Dep't of Education, No. NCES 2008-084, pp. iii, 24 (Sept. 2008).

They are also the consequence of the long-running policies of discrimination and assimilation, and insufficient culturally competent public health care approaches, which directly impact AI/AN

communities. Scholars and the U.S. government have documented the connection between the long-running effort to destroy AI/AN cultures and the ongoing trauma and resulting negative health effects that AI/AN children continue to experience. *See Newland Report* at 88-89 ("the Indian boarding school system continues to impact the present-day health of Indians"). Instruments such as the Historical Loss Symptoms Scale have been developed, tested, and used to demonstrate how historical trauma—the loss of land, culture, and language—shapes mental health challenges today. Les B. Whitbeck *et al.*, "Conceptualizing and Measuring Historical Trauma Among American Indian People," 33 AM. J. OF COMMUNITY PSYCHOLOGY 119 (2004). The symptoms are comparable to those of post-traumatic stress disorder. *Id.* at 121. The experience of cultural loss is linked with anxiety and affective disorders as well as substance dependence, and it is an independent contributor distinct from other mental health factors. Cindy L. Ehlers *et al.*, "Measuring historical trauma in an American Indian Community Sample: Contributions of substance dependence, affective disorder, conduct disorder and PTSD," 133 DRUG AND ALCOHOL DEPENDENCE 1 (Nov. 2013); *see also* Les. B. Whitbeck *et al.*, "Depressed Affect and Historical Loss Among North American Indigenous Adolescents," 16 AM. INDIAN/ALASKA NATIVE MENTAL HEALTH RESEARCH 16 (2009). AI/AN children experience historical loss symptoms at roughly the same rate as adults. *Id.* "[T]he historical losses experienced by North American Indigenous people are not 'historical' in the sense that they happened long ago and a new life has begun. Rather, they are 'historical' in that

they originated long ago and have persisted. The reminders of historical loss remain ever present." *Id.*

IV. THE KINSHIP CARE PRIORITIZED BY ICWA PRODUCES SIGNIFICANT BENEFITS FOR CHILDREN'S HEALTH AND WELLBEING THAT COUNTER HISTORICAL TRAUMAS SUFFERED BY AI/AN COMMUNITIES.

As noted above, AI/AN children suffer removal from their parents at a significantly higher rate than others. It is sometimes necessary. What happens next has a profound impact on the future trajectory of a child's life. It is critical to consider the higher rate of removal AI/AN children experience within the context of the disproportionate harm their communities have suffered as a direct result of longstanding federal and state policies.

Placing the child with a member of the child's extended family—such as a grandparent, an aunt or uncle, or an adult sibling—has an intuitive appeal. "The notion that children do better in families is a fundamental value," and "[k]inship care helps children maintain familial and community bonds and provides them with a sense of stability, identity, and belonging, especially during times of crisis." The Annie E. Casey Foundation, "Stepping Up for Kids," p.4 (2012), https://www.aecf.org/resources/stepping-up-for-kids. Family connections, particularly with siblings also being removed from the parents, can be preserved; and the extended family is more likely to have preexisting relationships with a child that will ease the difficult transition from parental care.

Maintaining healthy connections helps children to build resilience and thrive.

AAP, as a body of medical professionals committed to the medical care of children, recognizes the value of kinship care and supports efforts to eliminate barriers so that "children are able to be placed with kin, where appropriate." David M. Rubin *et al.*, "Needs of Kinship Care Families and Pediatric Practice," 139 Pediatrics e20170099 (Apr. 1, 2017) (AAP policy statement on kinship care). A meta-analysis of studies covering over 600,000 children found that children in kinship care "experience better outcomes in regard to behaviour problems, adaptive behaviours, psychiatric disorders, well-being, placement stability (placement settings, number of placements, and placement disruption), guardianship, and institutional abuse than do children in foster care." Marc Winokur *et al.*, "Kinship Care for the Safety, Permanency, and Well-being of Children Removed from the Home for Maltreatment: A Systematic Review," Campbell Systematic Reviews (Mar. 3, 2014), https://doi.org/10.4073/csr.2014.2.

Kinship care has been shown to have significant benefits, compared to fostering through traditional governmental programs. These benefits are significant enough that AAP policy promotes the use of kinship care as a primary consideration for placement of a child who cannot remain safely with the child's family of origin for a period of time. Veronnie F. Jones *et al.*, "Pediatrician Guidance in Supporting Families of Children Who Are Adopted, Fostered, or in Kinship Care," 146 PEDIATRICS 1 (Dec. 2020). "[C]hildren placed in kinship foster care

experienced fewer behavioral problems, mental health disorders, and placement disruptions compared with their counterparts in nonkinship care." *Id.* (citing M. Winokur *et al.*, "Systemic review of kinship care effects on safety, permanency, and well-being outcomes," 28 RESEARCH ON SOCIAL WORK PRACTICE 19 (2018)); *see also* David M. Rubin *et al.*, "The Impact of Kinship Care on Behavioral Well-Being for Children in Out-of-Home Care," 162 ARCH. OF PEDIATRIC ADOLESCENT MED. 550 (2008). It is not uncommon for children separated from their parents to have such problems, ranging from anxiety or depression to aggressive behavior. But the rate of such problems has been found to be 30% lower in kinship care than in general foster care. Rubin, 162 ARCH. OF PEDIATRIC ADOLESCENT MED. 550.

They also tend to have "fewer disruptions and overall better permanency outcomes than those in nonfamilial placements." "Impact of Kinship Care on Permanency Outcomes," U.S. ADMIN. FOR CHILDREN & FAMILIES, CHILDREN'S BUREAU, https://www.childwelfare.gov/topics/permanency/relatives/impact/ (last visited July 20, 2022). In one study, children placed in kinship care early after parental separation were nearly twice as likely than children in non-kinship fostering to have early placement stability. Rubin, 162 ARCH. OF PEDIATRIC ADOLESCENT MED. 550. Additionally, they "experienced less stigma and trauma from the separation from parents and were more likely to remain connected to siblings and maintain cultural traditions." 146 PEDIATRICS at 3.

Thanks to such benefits, "[k]inship care has become a preferred option in most U.S. child welfare

systems." "Impact of Kinship Care on Permanency Outcomes," U.S. ADMIN. FOR CHILDREN & FAMILIES, CHILDREN'S BUREAU, https://www.childwelfare.gov/topics/permanency/relatives/impact/ (last visited July 20, 2022). The rate of kinship fostering and adoption has increased steadily in recent years, and today 35% of children in fostering arrangements are cared for by relatives. The AFCARS Report, "U.S. DEP'T OF HEALTH & HUMAN SERVS., ADMIN. FOR CHILDREN & FAMILIES" (Oct. 4, 2021) (estimating fiscal year 2020 data). Multiple federal and state policies promote kinship care. *See, e.g.*, Amy Jantz *et al.*, "The Continuing Evolution of State Kinship Care Policies," Urban Inst. Discussion Paper No. 02-11 (Dec. 2002). More remains to be done; AAP supports policy changes to further "identify and eliminate barriers" to letting children be placed with their relatives. David Rubin *et al.*, "Needs of Kinship Care Families and Pediatric Practice," 139 PEDIATRICS e20170099, p.r. 2017). And kinship caregivers need more help. "Kinship caregivers report significantly fewer support services than other foster caregivers, such as parent training, peer support, and respite care." 146 PEDIATRICS at 4 (citing Sakai C, Lin H, Flores G., "Health Outcomes And Family Services In Kinship Care: Analysis Of A National Sample Of Children In The Child Welfare System." 165(2) ARCH PEDIATR ADOLESC MED. 159, 165 (2011). AAP believes such assistance should be a priority for child welfare programs, and a means to fully actualize the inherent benefits of kinship care for more children who could benefit from it but for the material deprivation of their families and communities.

Congress, for its part, is clearly committed to the benefits of kinship care. Since 2008, the Social

Security Act has required state child welfare agencies to provide notice to the extended family upon removing a child from the child's parents and to consider assigning a child's relatives as foster parents. Pub. L. 110-351, tit. I, § 101(a), 122 Stat. 3950 (codified as 42 U.S.C. § 671(a)(29)). The 2008 amendments also allowed States to use federal funds to support permanent kinship care arrangements. In 2014, Congress mandated that as a State develops permanent arrangements for a child separated from the child's parents, the State make "intensive" and "ongoing" efforts to find extended family members with whom to place the child. Pub. L. 113-183, § 112, 128 Stat. 1926 (codified as 42 U.S.C. § 675a(a)(1)). In 2018, the Family First Prevention Services Act provided federal funding for states to establish "Kinship Navigator" programs. Pub. L. 115-123, tit. VII, § 50713, 132 Stat. 245. These programs help people who are caring for their displaced child relatives to find support services. The Family First Prevention Services Act also funds the creation of a database to help find a child's extended family even when they are in other states.

The benefits of kinship care are particularly significant for AI/AN children, for whom "the almost complete lack of recognition of culture as a determinant of health and the lack of access to culturally competent care results in an alienating and disheartening experience." James Knibbe-Lamouche, *Culture as a Social Determinant of Health*, NATIONAL LIBRARY OF MEDICINE, NATIONAL CENTER FOR BIOTECHNOLOGY INFORMATION (Nov. 14, 2012), at https://www.ncbi.nlm.nih.gov/books/NBK201298/. In many Tribes, family structures traditionally include

"elaborate kinship networks." Linda J. Lacey, "The White Man's Law and the American Indian Family in the Assimilation Era," 40 ARK. L. REV. 327, 330 (1986). "Kinship is one of the main ways that tribal duties and rights are expressed," and extended family "often play a part in the life of a child" already. Lauren van Schilfgaarde & Brett Lee Shelton, "Using Peacemaking Circles to Indigenize Tribal Child Welfare," 11 COLUM. J. RACE & L. 681, 704 (2021). Given the extended family structures that are already in place in many AI/AN communities, a kinship care arrangement should be easier to establish and less disruptive for a child. And "[w]hen culturally appropriate care is provided, patients' response to care is improved, compliance increases, and engagement with the health system is more likely at earlier and potentially less-complicated and less-expensive points in disease progression." Knibbe-Lamouche, *supra*. Thus, kinship care, in this context, promises to deepen and strengthen the child's familial and Tribal connections and thus contribute positively to health, healing, and wellbeing even though a child has been removed from the parents.

Meanwhile, as discussed above, historical loss is an ongoing cause of trauma, to which the removal, over decades, of AI/AN children from their families and cultures contributes. When an AI/AN child must be removed from the child's parent(s), placements consistent with ICWA's preferences that preserve Tribal ties also reduce and alleviate historical loss. By contrast, foster arrangements that sever the Tribal connection risk damaging or destroying the child's connection to the child's AI/AN culture. This sort of harm was precisely what resulted from the extensive state-forced removals of the 1960s and

onward, discussed above. *See* "The Destruction of American Indian Families," 2 (S. Unger ed. 1977) (noting that in 1969, about 85% of AI/AN children in foster care were living in non-AI/AN homes); Sinha, 87 BROOKLYN L. REV. at 459 (similar); *see also* 25 U.S.C. §§ 1901(4)-(5) (Congress finding, *inter alia*, "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 the States, exercising their recognized jurisdiction over Indian child welfare 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"). The consequences of those removals detract from the health and wellbeing of AI/AN children today. Removing an AI/AN child from the child's parents and then failing to foster the child in an AI/AN community where possible would present a significant risk of exacerbating existing trauma—particularly by precluding the opportunity for the child to experience, internalize, and gain strength from the child's AI/AN community and culture, as well as the relationships that come with that community.

V. ICWA WAS DESIGNED TO PROMOTE KINSHIP CARE AND PREVENT HARMFUL SEPARATIONS, THEREBY SUPPORTING OPTIMAL HEALTH AND WELLBEING.

Concerns and observations like those above are exactly what led Congress to enact ICWA. Multiple voices warned about the massive removal of AI/AN

children from their families and Tribes, and about the long-lasting consequences that flow from "deculturation." *E.g.* "Federal and State Services and the Maine Indian," Me. Advisory Comm. to the U.S. Comm'n on Civil Rights (Dec. 1974), 87 available at https://digitalcommons.usm.maine.edu/me_collection /22/; "The Destruction of American Indian Families" (Stephen Unger ed., 1977) (describing surveys and case studies conducted by the Association on American Indian Affairs). Senate and House committees conducted hearings over six years to investigate the widespread removal of AI/AN children. H. Rep. 95-1386, p.27 (1978) (principal committee report on the legislation that became ICWA, reviewing the investigative history). The American Indian Policy Review Commission, established by Congress in 1975, 88 Stat. 1910, reported that "Indian children are still being removed from their tribal culture . . . through the adoption of Indian children by non-Indian families and their placement in non-Indian foster care homes and jurisdictions," and "such decisions have been made by non-Indians without tribal input." American Indian Policy Review Comm'n, Final Report, 410 (May 17, 1977), available at https://eric.ed.gov/?id=ED164229**.** AI/AN mothers testified that social workers had put them under intense pressure to surrender their children for fostering and then adoption. Sinha, 87 BROOKLYN L. REV. at 465.

Congress recognized that "[t]he wholesale separation of Indian children from their families is perhaps the most tragic and destructive aspect of American Indian life today." H. Rep. 95-1386, p.9 (1978). "It is clear then that the Indian child welfare crisis is of massive proportions and that Indian

families face vastly greater risks of involuntary separation than are typical of our society as a whole." *Id.*

Congress's response with ICWA was straightforward: "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." 25 U.S.C. § 1902.

ICWA represents the gold-standard for all children and is the forerunner of more recent policies promoting kinship care. Its placement preferences are similar to what the Social Security Act now mandates for States developing permanent arrangements. As discussed above, the Social Security Act directs a State to provide notice to family members, and to demonstrate "intensive" and "ongoing" efforts to find a child a home with family members before placing the child in other permanent living arrangements. 42 U.S.C. § 675a(a)(1). ICWA codifies a similar preference: "[A] preference shall be given . . . to a placement with . . . a member of the child's extended family." 25 U.S.C. § 1915(a).

The principal difference is the recognition in ICWA that if extended family are unavailable, there are still significant benefits from placing a child with other members of the child's Tribe or other AI/AN families. *Id.* Those benefits are real, and the preference for inter-Tribal adoption is a critical tool for preserving those connections.

In many Tribal cultures, family relations merge with clan relations and extend further to the

larger Tribal community. *See* Van Schilfgaarde & Shelton, 11 COLUM. J. RACE & L. at 704 ("[d]ispute and conflict among tribal members are often expressed as a violation of the norms surrounding the rights and duties they owe each other as *kin*") (emphasis added). These relationships are crucial to AI/AN children developing a strong sense of self and maintaining attachments that contribute to their resilience.[5] Congress understood this when it enacted ICWA. "An Indian child may have scores of, perhaps more than a hundred, relatives who are counted as close, responsible members of the family." H. Rep. 95-1386, at 10 (1977). The placement preference for "extended family" refers primarily to extended family as conventionally understood in non-AI/AN culture—grandparents, aunts and uncles, siblings, nieces and nephews, near cousins, and stepparents. 25 U.S.C. § 1903(2). In actuality, the broader Tribal community may have a relationship with and responsibility to a child that is similar to a familial relationship, and adoption by a Tribal member can provide many of the benefits of near-family kinship care.

Even if a child is removed from the child's family or community before the child has the opportunity to participate in Tribal culture, traditions, and practices, the child will still be aware of being displaced from the child's Tribe and heritage. The child's extended family, clan, or other members of their Tribe remain critical resources for the child's

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[5] "Resilience," in medicine, refers to 'the capacity to maintain or regain adaptive functioning in the face of adverse conditions." Vandervort, Frank E., et al., "Building Resilience in Foster Children: The Role of the Child's Advocate," 32 CHILD. LEGAL RTS. J. 1 (2012).

development and their understanding of their Tribal identity. A child who grows up understanding the child's culture and community has a greater chance of developing a healthy sense of independence and self-reliance. Having to seek out and connect to one's culture of origin for the first time as an adult (after being isolated from it during childhood due to adoption outside of the community) is challenging at best, and impossible for some. AAP firmly believes that maintaining a child's connection to the child's political and cultural identities and to the child's community is critical for the child's health and wellbeing.

The ICWA implementing regulations do not, as the individual Plaintiff's mistakenly assert, "[d]isregard[] the well-being and best interests of Indian children" by prohibiting consideration of "ordinary bonding or attachment" in determining whether there is good cause to depart from ICWA's placement preferences. Pet. Br. 43 (quoting 25 C.F.R. § 23.132(e)). In truth, the regulations do not bar a child's attachment to a foster family from consideration as a factor. They say only that "[a] placement may not depart from the preferences based *solely* on ordinary bonding or attachment that flowed from time spent in a non-preferred placement that was made in violation of ICWA." 25 C.F.R. § 25.132(e) (emphasis added). This limitation is common sense: A child-welfare agency should not be able to separate an AI/AN child from the child's family, without considering the child's Tribal connections, and then have the very fact of that originally unlawful separation constitute the sole reason for maintaining the child's isolation from the Tribe. *See Holyfield*, 490 U.S. at 54 (("the law cannot be applied so as

automatically to reward those who obtain custody, whether lawfully or otherwise, and maintain it during any ensuing . . . litigation").

Placing a child with extended family members early after separation doubles the likelihood of placement stability. Rubin, 162 ARCHIVES OF PEDIATRIC ADOLESCENT MED. 550 (2008). A policy that encourages kinship care, and does not privilege arrangements that have evaded the policy, is, indeed, well-designed for achieving stability for these children.

Moreover, a child's attachment to foster parents should, in general, not be the sole consideration in planning the child's placement. "Given the multiple needs of foster children, it is imperative that the child welfare system move beyond a singular focus on . . . permanency and that it promote the [overall] well-being of children in custodial care." Brenda Jones Harden, "Safety and Stability for Foster Children: A Developmental Perspective," 14 The Future of Children 31, 42 (2004). Developmental outcomes are also a central consideration. *Id.* at 40. The overall development and wellbeing of an AI/AN child separated from the child's parents *depends* on maintaining connection to the child's extended family and culture. Even outside the AI/AN context, it is widely recognized that "[f]oster parents must acknowledge and respect the multiple family ties foster children have." *Id.* at 40. For an AI/AN child, family ties extend outward in radiating circles to the Tribe, and the Tribal community provides invaluable cultural connections that a child needs to develop a resilient sense of self. A single-minded determination that a child should stay with a

particular family solely because of attachment to that foster family, without consideration of the child's other critical developmental needs would be contrary to current best practices for health and wellbeing and the best interests of AI/AN children.

ICWA provides a clear, sensible mechanism for preserving family and community connections. The results are not perfect; AI/AN children still undergo removal and fostering at a higher rate than others, and they continue to suffer the health challenges outlined above. Further federal support and policy changes, including supporting Tribal welfare systems, is needed to address the roots of these current conditions in the historical traumas. But without ICWA, the situation would unquestionably be much worse. ICWA remains necessary because these historical harms persist to the present day. The effects of the century-long program of forced assimilation, and of ongoing state-level separation of AI/AN families are substantial and cause ongoing harm to AI/AN communities. To eliminate the preference for care and adoption within a child's Tribe when AI/AN children are removed from their parents at disproportionate rates precisely because of the consequences of previous policies of separation, would be a present-day continuation of those harmful policies and would further extend these historical traumas through another generation.

Invalidating ICWA risks returning far too many children to the assimilationist realities of the past. The historical trauma that so many already suffer would be compounded and magnified with fresh loss. Preserving ICWA, however, protects the critical

familial and tribal support networks AI/AN children need to thrive.

CONCLUSION

The American Academy of Pediatrics affirms the continuing importance of ICWA as a gold-standard child-welfare policy. The Academy urges the Court to leave this vital statute undisturbed to promote the optimal health and wellbeing of AI/AN children.

Respectfully submitted.

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