JUDICIAL COUNCIL OF CALIFORNIA

TRIBAL COURT–STATE COURT FORUM

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TRIBAL COURT–STATE COURT FORUM

NOTICE AND AGENDA OF OPEN MEETING

Open to the Public (Cal. Rules of Court, rule 10.75(c)(1) and (e)(1))
THIS MEETING IS BEING CONDUCTED BY ELECTRONIC MEANS
THIS MEETING IS BEING RECORDED

Date:	August 13, 2020
Time:	12:15-1:15 p.m.
Public Call-in Number:	877-820-7831; Passcode; passcode 4133250 (Listen Only)

Meeting materials will be posted on the advisory body web page on the California Courts website at least three business days before the meeting.

Members of the public seeking to make an audio recording of the meeting must submit a written request at least two business days before the meeting. Requests can be e-mailed to forum@jud.ca.gov.

Agenda items are numbered for identification purposes only and will not necessarily be considered in the indicated order.

I. OPEN MEETING (CAL. RULES OF COURT, RULE 10.75(C)(1))

Call to Order and Roll Call

Approval of Minutes
Approve minutes of the June 11, 2020, Tribal Court–State Court Forum meeting.

II. PUBLIC COMMENT (CAL. RULES OF COURT, RULE 10.75(K)(1))

This meeting will be conducted by electronic means with a listen only conference line available for the public. As such, the public may submit comments for this meeting only in writing. In accordance with California Rules of Court, rule 10.75(k)(1), written comments pertaining to any agenda item of a regularly noticed open meeting can be submitted up to one complete business day before the meeting. For this specific meeting, comments should be e-mailed to forum@jud.ca.gov or mailed or delivered to 455 Golden Gate Avenue, San Francisco, CA 94102, attention: Ann Gilmour. Only written comments received by 12:15 p.m. on August 12, 2020 will be provided to advisory body members prior to the start of the meeting.

III. INFORMATION ONLY ITEMS (NO ACTION REQUIRED)

Info 1

Cochairs Report

- Approval of Minutes for June 11, 2020 Meeting
- Update on Forum Nominations

Info 2
ICWA Best Practices Project:
Presenter: Leily Arzy, Legal Fellow & Andi Liebenbaum, Attorney. Judicial Council Office of Governmental Affairs

Info 3
Updates on Attorney General's Office of Native American Affairs
Presenter: Ms. Merri Lopez-Keifer, Director, Office of Native American Affairs

Info 4
U.S. Supreme Court Decision in McGirt vs. Oklahoma
Presenter: Hon. Mark Vezzola, Chief Judge of the Chemehuevi Tribal Court

Info 5
Discussion of COVID-19 & Court Continuation of Operations and Reopening
Presenters: Discussion All

IV. ADJOURNMENT

Adjourn

JUDICIAL COUNCIL OF CALIFORNIA
TRIBAL COURT–STATE COURT FORUM

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TRIBAL COURT–STATE COURT FORUM

MINUTES OF OPEN MEETING

June 11, 2020
12:15-1:15 p.m.

Advisory Body Members Present:	*Hon. Abby Abinanti, Co-chair, Hon. Suzanne Kingsbury, Cochair,* Hon. Erin Alexander, Hon. Leonard Edwards (Ret.), Ms. Heather Hostler, Hon. Mark Juhas, Hon. Kristina Kalka, Hon. Lawrence King, Hon. Devon Lomayesva, Hon. Michael Sachs, Hon. Cindy Smith, Ms. Christina Snider, Hon. Sunshine Sykes, Hon. Juan Ulloa, Hon. Mark Vezzola, Hon. Christine Williams, Hon. Joseph Wiseman.
Advisory Body Members Absent:	Hon. April Attebury, Hon Richard Blake, Hon. Hilary Chittick, Hon. Leona Colegrove, Hon. Gail Dekreon, Hon. Gregory Elvine-Kreis, Hon. Patricia Guerrero, Commissioner Jayne Lee, Hon. Patricia Lenzi, Hon. Gilbert Ochoa, Hon. Robert Trentacosta, Hon. Claudette White.
Others Present:	Ms. Vida Castaneda, Ms. Audrey Fancy, Ms. Ann Gilmour, Ms. Andi Leibowitz, Ms. Amanda Morris

OPEN MEETING

Call to Order and Roll Call
The co-chairs called the meeting to order at 12:20 p.m.

Approval of Minutes
The Forum approved the December 12, 2019 meeting minutes.
Judge Williams abstained from voting due to not attending the meeting.

DISCUSSION AND ACTION ITEMS (ITEMS 1–5)

Info 1
Co-Chairs Report
Nominations period was extended and just closed on June 5, 2020.

Forum Annual Agenda was approved on April 24, 2020.

ICWA conference on June 24/25, 2020 (virtually). Registration fee is $50. Open to anyone who wants to attend. Contact Ann Gilmour with questions.

Info 2
Legislative and Rules and Forms Proposals:

The comment period for the below four proposals ended on June 9, 2020 and JCC staff are drafting responses.

- Proposal for Judicial Council–Sponsored Legislation (Family Law): Recognition of Tribal Court Orders Relating to the Division of Marital Assets, Item Number: LEG20-03

- Indian Child Welfare Act (ICWA): Consent to Temporary Custody of an Indian Child, Item Number: SPR20-29

- Indian Child Welfare Act (ICWA): Tribal Information Form, Item Number: SPR20-30

- Indian Child Welfare Act (ICWA): Remote Appearance by an Indian Child's Tribe in ICWA Proceedings, Item Number: SPR20-3

Info 3
Legislative Update
Presenter: Ms. Andi Liebenbaum, Attorney, Judicial Council Office of Governmental Affairs

There are no ICWA specific bills currently moving forward in the Legislature. As a result of the Legislature's need to reduce their bill load and focus on COVID 19 relief, many bills were withdrawn from consideration this year.

Info 4
Proposed Southwest Regional Cross-Jurisdictional Conference to address common topics of concern in order to promote collaboration and inspire new ideas across state, tribal, and federal jurisdictions.
Presenter: Hon. Lawrence C. King, Chief Judge of the Colorado River Indian Tribal Court

Judge King informed the Forum members of a conference potentially being held on September 25/26, 2020 with Tribal courts from Arizona, California, Utah and Nevada to share ideas and experiences. He will be providing the conference information to Ann Gilmour to distribute to Forum members.

Info 5
Discussion of COVID-19 & Court Continuation of Operations and Reopening
Presenters: Discussion All

Forum members discussed positive and negative experiences had while continuing operations during the COVID 19 pandemic. Topics raised included employees testing positive for COVID 19, utilizing Zoom and other distance services, litigant access to internet and phone services, opening plans for courts and complying public access to hearings.

Next Forum call is August 13, 2020.

ADJOURNMENT

There being no further business, the meeting was adjourned at 1:03 p.m.

Pending approval by the advisory body on August 13, 2020.

ICWA BEST PRACTICES GUIDE FOR CALIFORNIA COURTS AND JUDICIAL OFFICERS

JUNE 2020

BACKGROUND AND PURPOSE

CALIFORNIA is home to more individuals with Indian ancestry than any other state in the nation. Representing 12 percent of the nation's tribal population, 720,000 Californians reported having American Indian/Alaskan Native ancestry in 2010.[i]

The Judicial Council of California is committed to serving Indian children, parents, and tribes in state courts, and this guide is intended to assist ongoing efforts to improve court service in cases governed by the Indian Child Welfare Act (ICWA). Enacted in 1978, ICWA is a federal law that attempts to reverse the historic practice of Indian children being removed from their homes and placed with non-Indian families and institutions. ICWA and corresponding California laws give an Indian child's tribe the right to participate in and provide input on numerous key issues in child welfare cases, certain juvenile delinquency cases, family law cases, and probate guardianship cases, that could result in either someone other than the child's parent being granted custody of the child, or the termination of parental rights on behalf of the child. Despite this right, a tribe's ability to represent its position in a case may vary depending on its available resources, staffing, and location. One tribe may only have one ICWA advocate to act on its behalf in ICWA cases while another may have several advocates and attorneys.[1] These disparities are further exacerbated by the fact that tribes often have active ICWA cases across multiple counties in California, and in multiple states across the country. Most problematic of all, since its enactment in 1978, ICWA has been inconsistently interpreted and applied throughout the country. In an effort to address these inconsistencies, in 2016, the federal government enacted comprehensive regulations for the implementation of ICWA, found at 25 C.F.R. Part 23, and the Bureau of Indian Affairs (BIA) issued updated *Guidelines for Implementing the Indian Child Welfare Act.*[ii]

In the *ICWA Compliance Task Force Report to the California Attorney General's Bureau of Children's Justice* (2017)[2], tribes described the difficulties they faced when engaging in California's court system and attempting to exercise their rights in ICWA cases. The California Legislature has responded to the federal ICWA regulations and the updated BIA Guidelines, as well as the issues outlined in the *ICWA Compliance Task Force Report* by taking legislative action including, most significantly, the passage of AB 3176[3] in 2019 to align California statutory law with federal requirements.

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[1] This Guide uses the term ICWA advocate to refer to the social workers who represent their tribes in ICWA proceedings. The term ICWA advocate is used by tribal social workers and should not be misinterpreted to mean that the social workers are advocating on behalf of the Indian Child Welfare Act. Some tribes are able to retain attorneys, who are referred to in this Report as tribal attorneys. Together, tribal attorneys are referred to as tribal representatives.

[2] Hereafter referred to as the *ICWA Compliance Task Force Report.*

[3] The enactment of AB 3176 (Chpt. 833, Stats. of 2018) brought California law into compliance with the Bureau of Indian Affairs guidelines, discussed above. This legislation updated the state's Welfare and Institutions Code to align with the federal government's regulations.

California's Judicial Branch has also taken action to respond to federal regulations, the BIA guidelines, and the issues raised in the *ICWA Compliance Task Force Report.* Effective January 1, 2018, the Judicial Council amended California Rules of Court, rule 5.552, to provide tribes greater ease of access to juvenile case records involving their tribal children. In 2019, the Judicial Council amended California Rules of Court, rule 9.40, governing *pro hac vice* appearances to ease restrictions on appearances and fees for out of state attorneys representing tribes in ICWA cases. Effective January 1, 2020, additional comprehensive revisions were made to rules of court and Judicial Council forms concerning ICWA and juvenile cases to implement AB 3176 requirements and federal ICWA regulations and guidelines.

The purpose of this guide is to supplement and build on this earlier work in areas within the judicial branch's purview which are not amenable to remedy by legislative action or statewide rule of court. The Judicial Council has identified areas of court culture, practices, formal and informal policies, and communications that impact the ability of tribes to fully and meaningfully participate in cases involving their tribal children and, by extension, affect ICWA implementation. This report identifies appropriate policies, procedures, and practices courts may wish to implement when interacting with tribal parties and handling ICWA cases. Depending on their local needs, courts can consider and adopt some or all of these innovative recommendations and practices. At the very least, we hope that this guide encourages communication between tribes and their local courts regarding the unique needs and circumstances that tribes face.

METHODOLOGY

Judicial Council staff reviewed the California ICWA Compliance Task Force Report to identify court related concerns raised and reported in that document. To clarify and further understand the concerns identified, staff sought and incorporated direct input from tribes and tribal experts throughout the state in preparation for this guide. In total, 20 tribal representatives, including ICWA advocates and tribal attorneys, were interviewed over the course of several months in late 2019 and early 2020.[iii] The advocates and attorneys interviewed represent over 20 federally recognized tribes in California with experience in at least 36 of California's 58 counties.[4] The advocates and attorneys interviewed also represent their tribes in ICWA cases in other states including Oregon, Washington, Texas, Nevada, Kansas, and Indiana. Judicial Council staff also attempted to make contact with representatives from out of state tribes due to concerns that they may have amplified challenges in navigating the California court system. Unfortunately, we were unable to interview out of state tribal representatives for this study.[5] Courts should be aware that out of state tribal representatives may face additional challenges to effective participation including different time zones, which courts should make efforts to accommodate. In addition to tribal input, we solicited court practices from judicial officers who tribal representatives have identified as effective implementers of ICWA in state courts.

[4] See page 31 for details. Notably, some tribal representatives did not feel comfortable disclosing the exact counties or courts they had experience working in due to confidentiality concerns, so it is not known whether additional counties were included.

[5] 69 tribes, predominantly located in California, were contacted through email and phone to arrange for interviews. Of those contacted, 20 Californian tribal representatives were willing and able to arrange for an interview.

These conversations brought to light how the policies and practices impacting tribal representatives vary substantially depending on the nature of the tribal population in a given location and the court overseeing the case. As will be discussed in greater depth below, tribal representatives reported that ICWA implementation depends on the actions of and interactions with a county's child welfare agency, county counsel, court staff, and the judge overseeing the case. For ICWA to be implemented effectively, it is essential that all participants not only have a full understanding and appreciation of the law and tribal sovereignty, but also understand and appreciate the nature of a tribe's relationship to its children and families. Further, system participants must recognize the different roles that tribes play in an ICWA case as government, party, expert, and service provider. In order to achieve ICWA compliance in each individual case and improve outcomes overall for Indian children, families and communities that a court serves, all stakeholders must recognize the need for robust tribal engagement as system and case participants. The variation across courts creates challenges for tribes from different jurisdictions, both inside and outside of California, trying to participate in cases and navigate different procedures throughout the state.

This guide highlights best practices that have been identified and implemented by some juvenile courts in California in an effort to promote the uniform application of the Indian Child Welfare Act throughout the state and just outcomes for tribal parties, Indian parents, children, and families in child welfare proceedings. Other courts in California may consider implementing some or all of these policies and practices within their courts and justice systems to improve ICWA compliance and, most significantly, enhance outcomes for Indian children, families, and tribes throughout the state.

THE INDIAN CHILD WELFARE ACT IN CALIFORNIA

ICWA was enacted in an effort to curtail child welfare practices that threatened Indian tribes, families, and children. Hearings held in the U.S. Congress during the 1970s shed light on the profound damage caused by the removal of Indian children from their homes, families, and tribal communities throughout the country. Nationwide, approximately 25 to 35 percent of all Indian children were removed from their homes and placed in foster care, adoptive homes, or boarding schools.[iv] This made Indian children six to seven times more likely than non-Indian children to be removed from their families and housed in institutions.[v]

In California, the rates were worse than the national average; Indian children were over eight times more likely than non-Indian children to be removed from their tribal homes and families. Further, when removed from their tribe, over 90 percent of the state's Indian children were placed in non-Indian homes and institutions.[vi]

Congress enacted ICWA in 1978, but California did not amend state law to reflect the Act until decades later. In 2006, California enacted SB 678, referred to as Cal-ICWA, which incorporated ICWA requirements throughout the California Family, Probate, and Welfare and Institutions Codes. In 2016, the federal government, for the first time, enacted comprehensive regulations implementing the Indian Child Welfare Act[vii] and updated *Guidelines for Implementing the Indian Child Welfare Act*. The regulations were intended to promote the uniform application of the Indian Child Welfare Act throughout the country. In 2017, a group of tribal representatives in California compiled the experiences of tribes and tribal advocates involved in ICWA cases in California and presented their findings to the California Attorney General in the *ICWA Compliance Task Force Report to the California Attorney General's Bureau of Children's Justice.*[viii] This report stated that tribal representatives "experience frequent resistance and dismissiveness from child welfare agencies, county attorneys and even courts when appearing in dependency cases."[ix] The report contained issues both within and outside the purview of the judicial branch. For those issues within its purview, the Judicial Council has taken action through implementation of rules and forms, updating guides, and educational materials. The council has also developed ICWA job aids which are documents – such as check lists, informational sheets, recommended findings and orders, and resources – that assist tribal representatives, court employees, social workers, and judicial officers in child welfare proceedings pertaining to ICWA.[x]

Now in 2020, this guide was prepared with the goal of filing in the gaps that state law, and court forms and documents cannot address. It presents a series of best practices that are within the discretion and authority of local courts and individual judges that can be utilized to improve ICWA compliance and outcomes. These practices are consistent with the Judicial Council's 2014 Strategic Plan[xi], which outlines the branch's guiding principles. These best practices, intended to advance ICWA implementation and service to tribes, support and advance the following key principles of the Judicial Branch Strategic Plan: (1) Access, Fairness, and Diversity, (3) Modernization of Management and Administration, and (5) Education for Branchwide Professional Excellence. In its totality, this guide is a vehicle to advance Principle (4) Quality of Justice and Service to the Public, which is concerned with ensuring quality justice for California's increasingly diverse population. Whether court users have limited English proficiency, literacy,

financial means, or access to transportation, courts must adapt and innovate to meet their legal needs and help them resolve their disputes.[xii] Equal access to justice for tribes is no different.

TRIBAL VALUES AND TRADITIONS

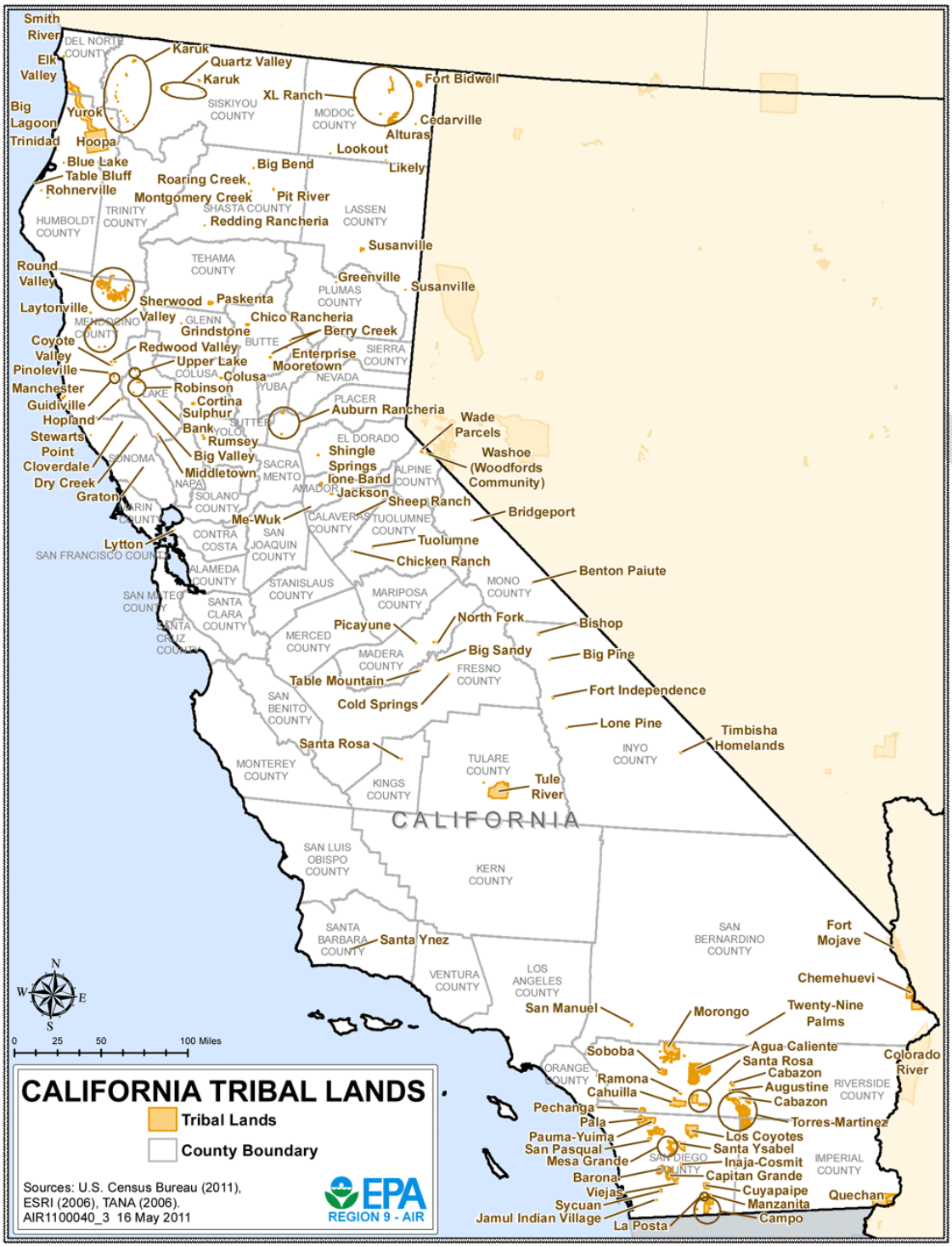
The state of California has 109 federally[6] recognized tribes with additional tribes seeking federal recognition.[xiii] While this guide intends to improve court services for all tribes, Indian children, and Indian families appearing in courts in California, it is essential to recognize that each tribe is different, and the makeup and needs of the tribal population in each California county is also different. Not all of the practices and policies discussed here will be appropriate in every court. In fact, this guide encourages courts to adopt policies that fit their local needs and their regional tribal communities' resources and practices. One of the challenges of implementing ICWA in California is the state's vast and diverse nature. Because the state is so large with numerous tribes that have different histories and circumstances, implementing ICWA can be challenging. Further, many Indian people in California are affiliated with tribes located out of state. This is particularly true in many of the urban areas that may have several large tribal populations, but no federally recognized tribes within the county itself. For example, a tribal community in Inyo County is going to be very different – historically and in the present – from a tribal community located in Los Angeles County. As a California judge put it, "there is no one size fits all problem or solution, [but] there are some common themes and promising strategies and approaches," as this guide highlights.

The most basic and common theme underlying the best practices gathered from the experts is this: courts need to know and understand their local tribal populations. Every tribe has its own unique customs and traditions. Over the course of a case, the court must become aware of the implications of its orders or decisions on tribal values or customs. One tribal attorney describes the consequences of a court ordering the placement of an Indian child in a non-tribal placement. Non-tribal guardians may not allow the Indian child to attend certain tribal ceremonies or events that are important in the child's tribal community. In doing so, the Indian child is cut off from their culture.

Courts would benefit from a greater awareness of their regional tribes' values and traditions, such as important ceremonies for tribal youth. Tribal advocates and attorneys have noted that they would appreciate being asked about these values and traditions in court. It appears that a better understanding of tribal culture could serve as a useful tool in ICWA proceedings.

[6] See *Figure I: California Tribal Lands* on page 6.

FIGURE I: CALIFORNIA TRIBAL LANDS[7]



Source: Bureau of Indian Affairs and the US Census Bureau (2011).[xiv]

[7] Notably, this map only represents federally recognized tribal lands and reservations and does not account for all tribes in the state.

AREAS FOR IMPROVEMENT AND BEST PRACTICES

This section presents practices and policies that tribal representatives identify as hindering their ability to represent their tribes as equal parties in the courts. After presenting the issue from the tribal representatives' perspectives, we offer best-practice resolutions that some judicial officers implement in their courts to address the issue.

1. *Consideration of unnecessary burdens on tribal resources and time could be improved.*

Tribal resources and time are fundamental to the tribes' ability to access the courts. Tribal representatives report that, in some counties, courts and social workers do not adequately consider tribal resources and time when scheduling hearings, calling court calendars, and making decisions about whether it is appropriate to delay or continue a hearing. Most non-tribal system participants in dependency proceedings are dedicated to the court or calendar in which they appear. County counsel, agency staff, and attorneys appointed to represent minors and parents are generally assigned to a specific court calendar. This is not true of tribal representatives who may have only one case in a particular court at any given time, but whose presence and participation is nonetheless critical.

The great distances that some tribal representatives must travel and limited tribal financial resources can create barriers for representing tribal interests in courts. First, inadequate court consideration is given to the distance that tribal representatives must travel for any given hearing or case. Some tribes are quite remote and tribal representatives must drive long distances to get to the juvenile court. Families living on tribal trust lands – also referred to as reservations – also face serious challenges when trying to get to court for their proceedings. They are often poorly serviced by public transportation and, in some cases, it is unrealistic to expect a tribal family or representative to appear in court by 8 a.m. Tribes located outside of California face heightened resource and temporal barriers, having to take time differences into account when trying to appear for court hearings held in California.

In terms of limited resources, some tribes are disadvantaged financially and have limited access to legal counsel. These issues are especially exacerbated when court cases are continued. When cases are continued, the tribe must expend its limited resources to pay its tribal representative to return to court at a later date. Further, if a contested matter is continued, tribal representatives highlighted the severe financial burden on tribes to pay for an attorney to return to court once again.

Best practice / opportunity:

To alleviate this issue, some judicial officers and their court staff prioritize communication with tribes regarding travel time, and place them on the court calendar at a more agreeable time. Tribal parties expressed appreciation when greater consideration was given to the distance they must travel to appear in court. If a tribe is three hours away from the court and the case is scheduled for 9 a.m., this creates logistical burdens that could be alleviated if, through improved communication, the court schedules that hearing for a later time.

In addition to considering travel time and setting a hearing for a realistic hour, some judicial officers have arranged for all ICWA cases to be heard together, creating a *de facto* "ICWA calendar" for the day. A bench officer who oversees child welfare and juvenile matters describes how establishing an "ICWA calendar is a serious proposal in [his] mind given the complexities of ICWA, especially from a civil and cultural perspective." Tribal representatives spoke to the benefits that come with ICWA calendars, and how they have reduced hurdles for their tribes. Instead of returning three times in one week to hear three separate ICWA matters, for example, the court will collect a tribal representative's cases and place them together on the calendar on the same day. In this way, the tribal representatives do not have to make three round trip journeys to the court.

Another judicial officer explains how she is cognizant of the implications of continuing cases for tribal parties. If she continues a case, she always asks the tribal party if the date proposed to reconvene works for their schedule, and if it does not, she will propose alternatives. Further, she orders legal counsel, if they anticipate that they will ask for a continuance at the next hearing, to call the tribal party to notify them so that the tribal representative can appear telephonically. She wants to avoid the great cost and inconvenience imposed on tribal parties, particularly those living far from the court, who have to appear in court for a two-minute continuance. Similarly, in another county, a judicial officer, has indicated to all parties that there is an expectation of prior communication with the tribe if the party intends to ask for a continuance.

While remote participation in court proceedings is discussed in further depth below, several judges note that accessibility to remote court participation is an important element in recognizing limited tribal resources and time. One judge describes how she wants the tribal representatives, especially when located hours away from court, to be able to stay in their offices and call in for short, non-evidentiary court proceedings. A judge explains that many non-evidentiary court proceedings can be quite brief, so she will never require a party – especially tribal – to travel the distance when Zoom or another remote means is available. Further, she tries to be considerate about when she is scheduling evidentiary hearings.

Finally, the Judicial Council is in the process of reviewing the *Indian Child Welfare Act (ICWA): Tribal Information Form.*[xv] If adopted, the form will increase access to the courts for California tribes with limited resources and for out of state tribes by allowing them to file documents by fax. It will allow tribes to provide information or declare positions early in a case, so tribal issues are less likely to disrupt the court process later. Now that the public comment period has come to an end, the form will be circulated through the Judicial Council's internal advisory committees, and is scheduled to come before the Judicial Council for consideration in September 2020. If approved, the form will be implemented on January 1, 2021.

2. *Judges should ensure that they solicit input from tribal representatives on key issues like active efforts, case planning, placement, and more, prior to making their rulings.*

Among the most frequent comments made during interviews with tribal attorneys and ICWA advocates was their perception that judges do not adequately scrutinize the child welfare workers' reports to ensure that ICWA is being implemented well or at all. Instead of routinely approving a county welfare worker's findings, tribal advocates and attorneys were most satisfied with the proceeding when judges asked critical questions of all parties regarding the validity of findings. In some cases, it was revealed through this questioning process that, in preparation of the child welfare report, the child welfare worker assigned to the case did not even contact the tribe.

Tribal advocates and attorneys identify those judges that actively consult the tribe throughout the case on placement, qualified expert witnesses, permanency planning, and more as those who implement ICWA most effectively. Judges should solicit tribal input early and frequently. This includes inviting tribal representatives to speak and share their insights when appropriate. Tribal representatives state that ICWA is best implemented when judges treat ICWA matters as standard, integrated into the court proceedings, as opposed to a brief or fleeting interruption. These thoughts are consistent with the 2017 *ICWA Compliance Task Force Report* recommendation that judicial officers should not allow child welfare workers, "to submit generic, conclusory findings of compliance with Cal-ICWA," and, instead, "the court should specify in exacting detail—on the record—what the good cause is and not allow unsupported findings."[xvi]

Best practice / opportunity:

One judicial officer describes how she, in terms of her personal courtroom practice, goes around counsel table, where tribal representatives are seated along with all other parties and calls on each person to contribute to the conversation. Whether a party is appearing in person or by phone, every participant in the case gives input. She describes how some judges "may not have that as part of their routine or habit," especially because those "with heavy caseloads are often incentivized to keep the case moving." She explains how judges need to be reminded how "[keeping the case moving] is not the most important thing" even if "it can be harder to slow down and make sure every voice is heard."

Another judicial officer describes why it is important to scrutinize child welfare reports submitted to the court. For example, simply accepting that active efforts or attempts to contact relatives of the child were made is insufficient. She wants to know the precise detail and how the attempts to contact family members were made and how often such attempts were made. She also emphasizes how, in regards to interpreting reports, if "we [the court] are missing the mark, tribal representatives should tell us and we should listen."

As mentioned above, the Judicial Council's proposed *Indian Child Welfare Act (ICWA): Tribal Information Form,*[xvii] could be helpful in making standard the solicitation of tribal input. This form intends to facilitate tribal input during child welfare proceedings and improve ICWA compliance. The pending form includes a space for tribes to clearly indicate their views on

communication with the court and other stakeholders, case planning, services, active efforts, placement, permanency planning, and other procedures in cases governed by ICWA.

3. *Tribes face challenges when trying to receive the county child welfare workers' reports prior to the hearings.*

Tribal representatives frequently stated that they do not receive the county child welfare worker reports in a timely manner prior to court hearings. The lack of time to review and scrutinize the report and discuss the contents with their tribal council often requires the tribe to request a continuance. Tribal parties describe how these continuances force all parties to incur avoidable costs. As mentioned above, continuances create financial burdens for tribes, the court, the parties, and other participants. It also negatively impacts the children and their families, who experience additional delays before potential reunification. When requesting continuances, some tribal advocates describe that it appears to the other parties – the child and the family – that the tribe is responsible for delaying the court process.

Best practice / opportunity:

One judicial officer has implemented a practice requiring the local county counsel's office to email a copy of detention reports to the tribe prior to the first detention hearing. At the first detention hearing, the judicial officer makes a point to identify the tribal representative's preferred email address and instructs county counsel to email the tribe while in court to ensure that there are no email delivery issues. In addition to other proper service requirements, she also instructs county counsel to email other reports to the tribe in a timely manner.

In another county, the judge mandates that tribes be added to the e-service system used by county counsel and the local child welfare agency to serve reports on minors and parents' attorneys as well as other participants in the case. The judge also mandates that there be a meeting or discussion (an informal meet and confer) that includes the tribal representative prior to each hearing to review the proposed report and recommendations. This minimizes surprises and conflicts that may cause a hearing to be continued.

To address issues like tribal access to child welfare reports, courts can use their authority to enact local rules and standing orders to create policies that address local needs and circumstances. Examples of local rules and standing orders that California courts have enacted are included in the appendix, and cover topics including tribal access to information, permissive tribal and service provider participation in cases involving tribal children where ICWA does not apply, requirements for agency proof of notice of hearings to tribal participants, tribal participation in juvenile mediation, and organization of ICWA court files. A judicial officer interviewed for this report similarly suggests that courts make a standing order that tribes are entitled to child welfare reports, making the agency in contempt of court for failing to send reports to the tribe. Alternatively, courts can develop local forms for tribes to request reports be sent to a specified address. Once the tribe submits the form to the court, the court can make it an order of the court, forwarding it to all parties.

Another bench officer states that in her county, the child welfare agency has generally become good about serving reports to ICWA advocates. However, if the report is not served to the tribe

in a timely manner, she will give the ICWA advocate an option to either call the case again later that day, giving the advocate a few hours to review the report, or grant a continuance so that the advocate can review the report thoroughly. She does this because she expects the tribe to be treated like any other party, which includes receiving reports in a timely manner.

Further, this bench officer describes how consideration of tribal resources is a matter of setting the expectation that all parties be courteous to one another. In her courtroom, the judge sets the expectation that ICWA advocates are treated the same as lawyers in the case. Specifically, she expects everyone to be kept in the loop about continuances, reports, and child-family team meetings. If her standards and expectations for communication are not extended to tribal representatives, she says the other parties "pay a severe price from me. They get scolded publicly [in court]. They do not want that to happen too often."

4. Tribes should be provided timely access to discovery on par with other parties.

In our interviews, some ICWA advocates and tribal attorneys reported a lack of access to discovery. Advocates and attorneys request that, as equal parties to a case, the courts must mandate that the tribes have access to discovery. This finding is also reflected in the *ICWA Compliance Report*, which similarly found that tribal representatives often lack access to discovery or gain access in an untimely manner.[xviii]

Best practice / opportunity:

One judicial officer recognizes that some courts more heavily scrutinize tribal advocates' authority to represent the tribe in proceedings. For example, if the tribe does not formally intervene, tribal representatives do not get access to all of the discovery. In this judge's courtroom, she does not require formal intervention by a tribal party in order to grant or authorize discovery. She considers, on a case by case basis, whether discovery, such as psychological reports, should be available to all parties. However, generally speaking, tribal parties should receive equal access to discovery because they are "held and live up to the same rules of confidentiality" as other parties such as the attorneys.

To address this issue, some judicial officers direct county counsel to include the tribal representative, at their preferred email address, on all communications that it has with other counsel in the case unless, of course, the issue is solely of concern to county and child's counsel.

As in issue area #3 regarding access to county child welfare reports, another judicial officer suggests issuing standing court orders and local forms as potential solutions. She opines that these would be useful tools for judicial officers to ensure compliance with ICWA and equal access to discovery for tribes. For example, courts could develop local forms for tribes to formally request access to discovery. Once the form is submitted, the court could make tribal access to discovery an order of the court. Once an order of the court, a judicial officer can hold any department or agency failing to comply with the order in contempt of court and, thus, compel compliance.

5. *Receipt of court orders, reports, notices of court hearings, and notices of appeal among tribal representatives must be timely and consistent.*

Notice of court hearings.

Tribal representatives' ability to appear before the court and exercise their rights as parties to cases involving Indian children hinges on receiving notice of court hearings in timely manner. ICWA advocates and attorneys frequently report receiving notices of court hearings in an untimely manner. In some cases, they do not receive notices of court hearings until well after their hearing dates have passed.

Court orders, court reports, and minute orders.

Tribal advocates and attorneys experience difficulty obtaining court orders, minute orders, and court reports after hearings. In some counties, despite being parties to the case, they reported having to ask several times to receive such documents. Some tribal parties describe, after having asked the court numerous times, turning to the county child welfare workers to get copies of the court orders and reports. One tribal attorney reports receiving court reports months late from the same county consistently. Another tribal advocate describes how, unless she takes the time to go to court and retrieve the report or order, she has to get a copy of these documents from a parent in the case.

Notices of appeal.

In the words of one tribal attorney, appellate issues begin at the trial court level. He describes how notice of appeal forms do not include space for the tribe to be included as a party. As a result of not being listed on the notice of appeal, the tribe does not get notices from the court of appeal. Attempting to become a party once the case is at the appellate level is, likewise, problematic because the process is very challenging. It is important to note that tribal attorneys described being treated like "second-class parties" at the appellate level. Further, some tribes do not receive the entire record for appeal.

Best practice / opportunity:

With regard to the timely receipt of court reports, minute orders, notices, and notices of appeal, judges have emphasized the importance of training court staff. One judicial officer describes how her court staff has been made aware of the importance of ensuring proper delivery of court reports to tribes, especially in a timely manner. She discusses how staff training has assisted in ensuring that the timely delivery of court orders and reports to all parties, including tribes, is a priority. In past years, some tribes would not formally intervene in a case, and, as a result, court clerks would not send the tribes court orders. After clarifying with clerk staff that, whether a formal intervention occurs or not, the tribe should receive court orders if it has indicated a desire to participate, the problem was alleviated. Tribal parties began receiving orders with greater consistency and in a timely manner.

Another judicial officer holds regular child welfare meetings with her court staff to work out these kinds of issues. Through these meetings, the judge clarifies with her staff that tribal representatives need to be receiving certain documents that may have been overlooked. Among other issues, "we discuss how to improve the minutes and how to improve notices of court hearings." If someone, such as a tribal representative, brings an issue to her attention, the judge puts it on her agenda and discusses with her staff at these regular meetings. The judge will even share her email with tribal parties to ensure smooth communication, and limit the delay in tribal receipt of documentation. Her philosophy on these issues is that, "if there is a problem, they can reach out to me and I will address it. If you want quality tribal engagement, you must make yourself available for input. You cannot make changes without knowing what the problems are."

The programming of court case management systems may address why some tribes do not receive court orders, reports, and notices in a timely or consistent manner. In order to ensure that ICWA cases are properly identified and tracked, and to help ensure that proper ICWA requirements and orders are met at all stages of the case, courts should incorporate ICWA flags into their court case management systems. That said, it may be that some case management systems do not have the capacity to add the tribe as a party. By way of example, the state of North Dakota uses a case management system known as Odyssey (Tyler Technologies)[xix] that is also employed in some California courts. They too experience challenges because the system does not appear to have a way to specifically name tribes as parties. The recently published *State of North Dakota Juvenile Court Best Practice Manual* (2020)[xx] outlines how North Dakota's juvenile courts include ICWA information, including tribal identity, in their Odyssey case management system, through the use of flags:

> *Odyssey Case Flag: Upon determination that ICWA may apply, assigned staff document the information in Odyssey by applying the ICWA case flag and entering the tribe(s) name in the comment field. If the tribe is not known, a comment of "further inquiry needed" can be entered.*[xxi]

Uniform inclusion of ICWA and tribal information in court case managements systems would alleviate a number of the problems identified by tribal representatives related to failure to receive service of notices and documents, particularly notices of appeal, from the juvenile courts. According to one judicial officer, if a tribe is not identified as a party or does not formally intervene, it is unlikely that the tribe will get notices of appeal. She notes how, in her experience, some tribes do not want to formally intervene because they do not want to formally engage with a state court system that they view negatively. She echoes the suggestion that courts ensure their case management systems properly identify tribes or that work-arounds be developed.

6. *Quality of remote appearance must improve due to essential role of tribal representatives in child welfare cases.*

The ability to appear remotely and to effectively present one's position before the court is essential regardless of case type. However, remote appearances are especially consequential for ICWA

advocates and tribal attorneys because of the nature of their caseload. First, these are incredibly sensitive cases, dealing with health, safety, and the future welfare of children. Second, many advocates and attorneys have cases spread throughout the state. One ICWA advocate – the only one for her tribe – reported having between 32 and 38 active child welfare cases at any given time in several counties. The same advocate reported participating by utilizing remote appearance at least 60 percent of the time for court hearings. Because it is not cost-effective or feasible for a tribe to have a physical presence in every case throughout the state, remote appearances are essential to tribal representatives.

Tribal representatives frequently report that the quality of remote appearance technology is poor. The advocates and attorneys face numerous challenges when representing the tribe's position through the phone. They must often wait for hours on the phone before their case is called, if it is called at all. They describe remote appearances as significantly less effective than in-person appearances but due to logistics and resource scarcity, in-person appearances are not possible much of the time. Some tribal representatives find it challenging to hear the proceedings when participating remotely and feel like a "nuisance" throughout the case. Tribal parties appreciate when judges give the tribe an opportunity to speak, as opposed to putting the advocates or the attorneys in the position of having to interrupt if they want to share the tribe's views over the phone. Tribes also suggest that the court make better use of microphones in the courtroom when a party is appearing by phone.

One tribal attorney specifically prefers when courts do not use CourtCall[8], for she finds the service to be particularly difficult to use. While outside services may simplify things for the courts, companies like CourtCall are not familiar with tribes and often do not know that tribes are not required to pay the CourtCall participation fee.[xxii] Notably, the passage of AB 686 (Chapt. 434, Stats. 2019)[xxiii] established that, in any proceeding governed by the Indian Child Welfare Act, the child's tribe may appear by telephonic or remote appearance and is not subject to paying fees for such an appearance. Before the passage of AB 686, tribal parties reported that the requirement to pay for remote appearances had been a deterrent to court participation due to limited resources. Typically, non-tribal court participants are required to pay a $94 fee, per call, to participate remotely.[9]

Notably, one tribal attorney states that the telephonic fee had not been the deterrent to remote participation but, instead, the process of establishing remote participation and getting access to the court. Without a relationship with county counsel or child welfare worker, tribal attorneys and advocates have difficulty getting access to the court clerk to establish a phone line in the first place. Because courts vary in their practices, tribes face challenges with contacting the court clerks.

[8] CourtCall is a private platform that facilitates remote participation in court proceedings. Attorneys, self-represented litigants, and other court participants use CourtCall by calling in to court and participating remotely in the proceeding. Some California courts do not contract with CourtCall or any other service provider and have developed their own technological remote participation systems.

[9] 78 percent of the funds from fees goes directly to CourtCall. The remaining funds go to the Trial Court Trust Fund.

Best practice / opportunity:

To limit this problem, one court ensures that court clerk staff and tribes with pending cases exchange contact information including phone numbers and email address. The judge also prioritizes ICWA cases on the calendar and ensures that tribal representatives have a fixed time when they will be contacted, rather than having to wait on the line for hours while the calendar proceeds. Even before the COVID-19 pandemic, in the early months of 2020, she had considered using alternate remote technology in lieu of CourtCall, such as Skype, so tribes and other parties could more effectively participate in hearings. Since the emergence of the pandemic, the judicial officer and her court staff have become well-versed in Zoom to facilitate virtual hearings. With the widespread implementation of Zoom in courts, she describes how there is no "good reason why courts could not accommodate tribes via Zoom proceedings."

Another judicial officer prefers the use of her courtroom's conference call system to facilitate remote participation. Her courtroom has limited capacity to use video remote technology. This judge finds that she "get[s] more out of listening to someone's argument" over the phone. Regardless of the means, she ensures that "tribal representatives can participate at the level they are entitled to."

Courts must also be mindful of tribal capacity when considering the appropriate technology for remote appearance. Tribes may have limited access to high speed internet, which places video appearances out of reach.

Due to frequent conversations with local tribes, one judge describes how the cost of CourtCall was brought to her attention early on. Before the enactment of AB 686, she had a standing order in her court that remote participation would be of no cost to tribes. She set up a process so that a tribe could file a standing fee waiver. Like other judges, however, she has recently shifted to Zoom, which has eliminated the issue of fees altogether.

Earlier this year, advisory committees to the Judicial Council proposed that the council amend rules 5.9, 5.482, and 5.531 of the California Rules of Court, effective January 1, 2021, to allow an Indian child's tribe to participate in any hearing in a proceeding governed ICWA by telephone or other computerized remote means. Such changes would implement the requirements of AB 686 and bring California Rules of Court into compliance with state law. With the conclusion of the public comment period coinciding with the completion of this report, this proposal will be circulated through the Judicial Council's internal advisory committees in the coming months and is scheduled to come before the Judicial Council for consideration in September 2020. If approved, the proposal will be in effect on January 1, 2021.

7. Qualified Expert Witness (QEW)

Depending on the county, some tribal attorneys and ICWA advocates have reported challenges with obtaining qualified expert witnesses that are truly knowledgeable about the prevailing social and cultural standards of the tribe as required by law. In our conversations, tribal representatives expressed frustration in regards to county agencies identifying a tribal person from an entirely

different tribe to serve as a QEW in their case. As discussed above in *Tribal Values and Traditions*, each tribe has its own customs and traditions, and tribes often differ significantly in family and child rearing practices. One tribal advocate describes how "not any tribal person can speak to any [other] tribe's practice." Complicating matters, many tribes do not have the resources to obtain qualified expert witnesses to speak to their tribes' cultures and family and child-rearing practices.

An ICWA advocate described this instance: the tribe was not present, the county and court settled on a qualified expert witness. The tribe did not believe that this QEW had the knowledge and understanding of the tribe's specific practices, as required by the law. In response to the ICWA advocate's opposition, county counsel notified her that she would have to file an objection with the court. However, the tribe could not afford to retain an attorney and the ICWA advocate, a social worker, did not have the legal training to successfully challenge the selected QEW. In this case, lacking an attorney was a disadvantage for the tribe seeking to assert a challenge to the county's selection of a QEW. In such cases, the ICWA advocate suggests that courts should not allow for the county's chosen QEW without the tribe's input.

As with the other issues presented in this guide, there is great variation in tribal representatives' experiences. Many representatives did not experience difficulty obtaining a suitable QEW. Similarly, some judges ask the tribe if they have a qualified expert witness while others do not.

Best practice / opportunity:

Whenever a case needs a QEW, one judicial officer describes how she will first ask the tribe if they have anyone in mind. If the tribe does have a QEW, the court will utilize the expert identified by the tribe. If the tribe does not have an expert, she will turn to the child welfare agency to find a QEW. A QEW offered by the department must be approved by the tribe. This judge has found this practice to be effective in alleviating concerns about identifying inappropriate experts.

Another judicial officer states that she will not have a QEW testify if the tribe does not approve. In her county, local tribes have prepared lists of Indian QEWs. These lists are shared with the local child welfare agencies, so, ideally, they should propose and the court should hear from a QEW that the tribe acknowledges as having the necessary knowledge of its practices and traditions.

WELL-RECEIVED PRACTICES

This section presents existing court practices and policies that tribal representatives appreciate. During our conversations, tribal representatives reported that these practices enhance their ability to represent their tribes as equal parties in a case. As described above, tribal representatives experience challenges due to variation in court practices from county to county, court to court, and even, judge to judge. However, the following practices are generally well received by tribal parties and are currently implemented in some courts.

1. *Continuances granted by the courts.*

ICWA advocates and tribal attorneys report that their requests for continuances are usually granted and well-received by the court. When a hearing is continued because the tribal attorney did not receive a child welfare worker's report in a timely manner, for example, the tribal representatives must frequently request continuances, which are typically approved by the judge. However, as discussed, these continuances can also create resource, financial, and logistical issues for tribes.

2. *Treating tribal representatives like legal counsel.*

ICWA advocates described that they are often treated differently from attorneys in court whereas tribal attorneys were more likely to report feeling like equal parties in ICWA cases. ICWA states that Indian tribes have an absolute right to intervene in these court proceedings at any point in time.[xxiv] Whether by ICWA advocate or tribal attorney, Indian tribal representatives are entitled to engage in the court proceeding and assert what they believe to be the best interests of the tribe and the children.

As discussed in the *ICWA Compliance Report*, individual judges decide how their courtrooms will operate and what practices are tolerated. It falls on judicial officers to address the different treatment of attorneys and ICWA advocates by setting up equitable policies and practices. In many ways, judicial discretion can impact tribes' ability to "meaningfully participate"[xxv] in court proceedings. Interviews with tribal representatives shed light on the following practices – entrance into the courtroom, seating in the courtroom, and morning calendar call – which may appear mundane, but these issues significantly impact tribes' ability to participate in court. Addressing these issues may enhance tribes' participation and begin to alleviate the underlying disparate treatment between ICWA advocates and attorneys:

Allowing ICWA advocates and tribal attorneys to wait for cases to be called in courtroom.

While most advocates and attorneys reported sitting in the hallway for their cases to be heard, some reported being allowed to wait in the courtroom. They stated that they appreciated this practice and felt respected when invited to do so. However, there are instances in which the tribe's attorney or ICWA advocate may prefer to sit in the hallway with the parents or child involved in the case. A standing invitation for ICWA advocates to wait in the courtroom, if they so choose, may appeal to tribal representatives, even if they do not exercise this opportunity in every case.

Inviting ICWA advocates to sit at counsel's table when their cases are being heard.

ICWA advocates describe feeling like equal parties when invited to sit at counsel's table while their cases are being heard. According to advocates, this practice varies depending on the court and the judge. If not allowed or invited to sit at counsel's table, advocates will be asked to sit in the jury box or in the audience when their case is being heard. Getting a literal "seat at the table" allows the tribal parties to feel welcome and be better heard. While some advocates do not view seat placement to be intentionally hostile, some describe it as a signal to the tribe as to how they are respected. However, advocates acknowledge that some courts and courtrooms do not have the capacity or are not designed in a manner to accommodate more parties at counsel's table. While advocates are not typically invited to sit at counsel's table in some counties, tribal attorneys describe how, in almost all cases, they are invited or presumed to sit at counsel's table. In other words, courtroom size and orientation may explain why some advocates, like other participants, are not at the table. But, when it is possible to include them, all tribal representatives should be sitting with other parties and attorneys.

Including ICWA advocates in morning calendar call.

Many ICWA advocates describe the great value that they place on being granted access to the courtroom during calendar call. Many ICWA advocates are typically not included in calendar call, but they describe how there is information provided during calendar call that tribal parties find useful. They also view this time as an opportunity to engage in pre-hearing conversations with county counsel, social workers, and others and would like to be involved to express their tribes' positions.

Advocates who are invited to be in the courtroom state that it is helpful to hear what other cases are on the calendar and to hear attorney input before the cases begin. Many courts do not include ICWA advocates for morning calendar call, requiring that they wait in the hall with other parties. It may be the case that, for early court sessions, tribal representatives are not able to reach the court in time for morning calendar call. However, if representatives are present in court, they should be included for morning calendar call.

Judicial Input:

A judge in one county ensures ICWA advocates are treated like attorneys in that they are welcome to enter the courtroom at any time, invited to participate in calendar call, and expected to sit at counsel's table. During calendar call, which is a time for informal discussion about cases between the attorneys and the judge before the cases of the day are formally called, the judge will seek input from the tribal parties. She describes how the tribe can "set the stage and the tone for the comments from other attorneys who follow the tribe's input on the sufficiency of [certain] matters, or lack thereof."

Another judicial officer describes how everyone is allowed in the courtroom during calendar call because "frankly [it is] the most important." She describes how ICWA advocates, like social workers, are professionals and are welcome to engage in calendar

call. Further, she finds the disallowance of ICWA advocates from being seated at counsel's table to be "disrespectful."

3. *Including ICWA advocates in regular meetings with judicial officers, county counsel, and dependency counsel.*

ICWA advocates report that inclusion in regular court meetings with system partners – such as county counsel and local child welfare agencies – has strengthened their ability to represent their tribes. The advocates describe these meetings as productive ways for all parties to address systemic problems, beyond a single ICWA case.

Judicial Input:

Several judicial officers from different counties recommend convening "listening sessions or round tables" through which court personnel can learn more about the perspectives and experiences of county service providers and tribal representatives within the court system. This would not be a time to discuss individual cases, but to identify how different parties are generally experiencing the court system and to highlight what is and is not working. These meetings have been particularly useful for the judges to become aware of the challenges that tribal representatives experience in court. For example, judges may become aware, for the first time, that tribal representatives do not routinely receive notices of hearings or copies of court reports.

One judge highly recommends that fellow judges convene meetings focused on court improvement and ICWA implementation. She explains how judges and court staff should be "prepared to listen." She has found that the court can be an effective facilitator of meetings and constructive dialogue between tribes and local agencies. She understands why tribal representatives may not initially trust the court, due to California's deeply troubling history with indigenous people, stating "it is fair for them to be wary of you." Through these meetings, she has learned about local tribes in her county and has come to better understand each tribe's individualized needs. She emphasizes that one tribe may want a practice or a policy entirely different from another. The judge adds, "tribes have an absolute right to want different things because we are dealing with a sovereign- to-sovereign relationship."

4. *Consideration of tribe's schedule for next hearing.*

Many ICWA advocates and tribal attorneys reported that their tribes' schedule is typically considered when scheduling the next court hearing. The judge will typically ask the tribal party if they are able to appear in court on the next potential court date.

5. *Approval of remote appearance request.*

The courts usually approve remote appearance requests.

6. *Constant and open communication with county counsel*

In some counties, county counsel has been active in reaching out to and accommodating tribal representatives. Tribal representatives appreciate when county counsel communicates with them in advance of hearings. This correspondence often concerns whether the tribe may need accommodations for a remote appearance, or confirming that the tribe plans to appear for the next hearing.

SUGGESTIONS FROM TRIBAL REPRESENTATIVES

This section contains suggestions for improved collaboration with the tribes recommended by tribal representatives. From their perspective, the courts' adoption of some or all of these recommendations would improve the implementation of ICWA and meet the tribes' unique needs in court. As appropriate and relevant, judicial input regarding these suggestions is provided.

1. *Implement greater uniformity in practice across courtrooms and courts.*

From court to court, there is great variation in the implementation of ICWA practices and policies. ICWA advocates and tribal attorneys suggest that uniform practices should be adopted across all courts. Tribal representatives have cases throughout the state, and it can be difficult to navigate the various court policies. From courtroom to courtroom within the same jurisdiction, a similar lack of uniformity has been an issue.

2. *ICWA checklist for judges to utilize during court.*

Tribal advocates suggest the use of a "checklist" for judges to refer to during ICWA cases. They suggest that such a checklist could be useful for judges to go through each element of ICWA before proceeding in the case. Judges could check timely notice, culturally appropriate case plan, active efforts, and other ICWA requirements before proceeding through each stage of the case. The Judicial Council could develop a checklist for bench officers to use that would ensure that each issue area has been sufficiently addressed and adequately scrutinized.

However, some ICWA advocates and attorneys warn against current practices in which the court goes through each ICWA requirement superficially without legitimate deliberation (see #2 in *Areas for Improvement and Best Practices*). The checklist should serve as a reminder of ICWA requirements, but it should not create a system by which the judicial officer proceeds through each item without consideration of the intent behind ICWA, tribal expectations, or consultations.

Judicial Input:

One judge believes an ICWA checklist can make "judges box-checkers without truly effectuating the purposes behind ICWA." She believes that a judicial officer must learn to be culturally sensitive for ICWA to be implemented effectively. She suggests that a judge in each court – a volunteer who is concerned with cultural sensitivity – should be identified.

The presiding judge of that court could assign all ICWA cases to this individual to ensure ICWA is rigorously implemented.

Another judge notes how she has considered this ICWA checklist suggestion in the past. She believes this may be helpful for some judicial officers, especially those who are new to the bench or infrequently handle ICWA cases.

3. *Training as to the historical significance and importance of ICWA.*

Tribal representatives have reported that some child welfare workers, county counsel, and judicial officers do not understand why the tribe has a voice in child welfare proceedings or why that voice is important. ICWA advocates and tribal attorneys find themselves having to educate these parties as to why they are equal participants in these cases, and what the significance of ICWA is. Similarly, tribal representatives stated that, in some cases, there is a perception that ICWA is a constant and unnecessary impediment to court processes. One tribal attorney reports that especially if the tribe enters a case in a later stage, they are made to feel that they are a "nuisance."

Improved education as to the history of the Indian Child Welfare Act and why ICWA is important would be beneficial. Some tribal representatives suggest that an awareness of past practices in California and the high rates of Native American youth in the foster care system may be instructive for system partners. This education may result in greater compliance and reduce the tendency for ICWA to be perceived as a burden that slows down the court process. Beyond education and training, one tribal representative states that there "needs to be a culture shift, an understanding that tribes are sovereign, and tribal youth are citizens of those tribes."

Judicial Input:

One judge describes how she and her staff are "on board" with her courtroom being "an ICWA dedicated courtroom." She has spent time explaining the importance of ICWA to her court staff and "its historical underpinnings, and the 'why' of what we do, so they will be happy to do their part." In terms of education and training, she notes that all judges assigned to dependency receive training on ICWA, including its purpose. A disconnect may arise in practice when judges begin overseeing dependency cases. This disconnect may result from a judicial officer's lack of cultural competency or inadequate commitment to honoring the underlying intent of ICWA. In some instances, it may manifest as an unintended consequence of packed court calendars where judicial officers are trying to move through their cases in a timely manner. All delays, including those that arise in ICWA cases, may be avoided in these circumstances. Such actions, perhaps well-intentioned, are disrespectful.

Another judge describes how she has seen a few misconceptions among judges and stakeholders during proceedings regarding tribes and ICWA. Some may believe that tribes do not want intervention for the Indian child at all, and are only interested in slowing down the court process. She has found that tribes want what is in the best interests of the child and will ensure the child's safety, even if that means state intervention, as long as ICWA

procedures are followed. Further, some assume that tribes are biased such that they will only speak positively of the tribal parent. To the contrary, this judge has found that tribal representatives in her court are appropriately critical of their members, and are invested in solutions that provide the greatest safety and security for the Indian child. She describes how the tribes often "want to hold their members accountable and change negative behaviors."

With regard to the historical significance of ICWA, one judge discusses how her county "has a terrible history of white violence against Indians." She explains how the court and local government must "appreciate the pain this has caused." She has personally taken part in local events where non-Indian members of the community listen to the stories and experiences of local native tribes. She has found this to be greatly impactful, especially on her role as a judge overseeing ICWA cases. She states that "we cannot just sit in our ignorance." Courts and stakeholders must recognize why ICWA "was put into existence," including that "children were taken away from their tribes and cultures" and "tribes have a right to self-determination."

4. *Court staff and court clerk training.*

Court staff may benefit from training on ICWA and the important role of tribes in court proceedings. It has been reported that court staff will, at times, not share information with tribal attorneys, or require that all filing, for example, be done in person, which can be impossible or prohibitively expensive for out-of-state, out-of-county tribes, and even in-county tribes.

Further, court clerks may benefit from training on the specifics of tribal documentation. Tribal attorneys have reported being rejected when trying to file a tribe's resolution – a document representing a tribe's position on a policy or issue pertaining to its government or community – for an upcoming court hearing. Tribal representatives suggest that courts assign a single court clerk with expertise in filing ICWA related documents. Alternatively, before rejecting tribal documentation, require the clerk check with a juvenile dependency judge who has expertise in ICWA. This would be especially helpful in counties that have a greater tribal presence; having a designated court clerk responsible for ICWA cases may improve the process for everyone.

Judicial Input:

While this is not an issue that one particular judicial officer has encountered in her courtroom, she agrees that court staff training should resolve these issues. She describes how court staff training is consequential for justice outcomes. She states that "the judge is always going to set the tone. If the judge does not perceive something as important, the clerk will not perceive it as important." She explains how, as a result of good staff training, once in a while she may forget to check in with the tribal representative on the phone line, and her court clerk will remind her because the clerk knows and shares the judges belief that that ICWA is important. This judge agrees that understanding and implementing the requirements of ICWA and instilling such values in staff are important. She notes that her emphasis on training court staff on ICWA does not stem from a desire to avoid being reversed on appeal. Instead, the judge believes that upholding ICWA is important because the law itself has value and that treating Indian families right should be the motivating force behind doing this work. Highlighting the importance of

ICWA to staff and actively addressing procedural errors is an important part of ensuring that the courts treat Indian tribes fairly and correcting our historic treatment of Indian families.

5. *Develop an ICWA Calendar.*

Tribal advocates and attorneys find ICWA calendars to be helpful in improving ICWA compliance and maximizing tribal resources and time. Even without a formal ICWA calendar, some judges will organize the court calendar in such a way that ICWA cases are heard concurrently. In calling these cases together, the court can prepare to have a seat available at the table for the ICWA advocate and/or tribal attorney, and may be more likely to implement ICWA practices appropriately.

Judicial Input:

One judge points out that, in her court, there are not enough ICWA cases to create an ICWA calendar. And, even if they did, an ICWA calendar may not be feasible because all ICWA cases are on different timelines, so it may be challenging to coordinate all of them on one day. For this reason, in her small court, she prefers the approach of specifically training one judge in all aspects of ICWA. This one judge, then, handles all cases where an Indian party is involved in a child welfare proceeding. Once a case has been identified as one in which there is "reason to know" that an Indian youth is involved, the case should be set to appear before that specially trained judge.

Similarly, another judge notes that while ICWA calendars are a great idea, some courts (like her own) have so many ICWA cases every day that training a single judicial specialist would not be feasible. To accommodate tribal representatives, she generally calls ICWA cases first unless there is an evidentiary hearing that takes priority. She suggests that, if appropriate, other judicial officers could call ICWA cases first to respect tribal representatives' time. By having their cases called first and consecutively, tribal representatives do not need to spend their whole day in court. They can complete their cases for the day and return to their offices for a remote case or travel to another court for an in-person hearing. However, this solution requires open communication between tribal representatives and the court. Through communication and coordination, the court can determine whether tribal representatives are able appear in court and present at the outset of the calendar.

6. *If continuances are issued in court, notify tribes.*

In cases where they are not able to appear in court for a particular hearing, tribal parties appreciate when they receive notice that there has been a continuance.

7. *Utilize electronic means to notice tribes.*

Using regular post to mail notices of court hearings has been described as ineffective. Numerous tribal representatives have reported that they often do not receive notice of a court hearing until

after the court date. Many suggest utilizing electronic means in addition to postal notices to ensure that the tribe receives timely notice of court hearings. Those who receive electronic notice find it to be timely and effective. Further, considering that tribal representatives are frequently traveling, they would benefit from receiving notices electronically because they may not be at their office in time to receive mailed notice of the next court hearing. However, all tribes do not have the same degree of technological or internet access. Thus, depending on these factors, electronic notice may not enhance all tribes' likelihood of receiving notice of court hearings. Ultimately, court staff should check with tribal representatives to ensure that they are receiving notices in a timely manner.

8. *Utilize electronic means to send tribes court reports.*

Some counties are able to deliver court reports by electronic means, which representatives find to be very helpful.

9. *Facilitate relationships and increase exposure between judges and local tribes in the region.*

ICWA advocates suggest that judges should educate themselves on the tribes in their local areas. Judicial officers and court staff should visit their local tribes so they can get a sense of the services that the tribe can provide. Some advocates feel there is a misunderstanding of the quality and type of services that tribes provide families. Improved training may prevent culturally appropriate services provided by the tribe from being underestimated or overlooked. One advocate states that after judicial officers visit the tribe, "we become real to them."

Judicial Input:

Several judges highlight the importance of getting to know the Native American community in their respective communities. They suggest that judges utilize the Bureau of Indian Affairs website[xxvi] to identify local tribes. Upon identifying local tribes, the court can facilitate communication by identifying the tribal leadership's contact information through the Tribal Leaders Directory[xxvii] or simply searching the tribal websites online, which typically detail each tribe's governance structure and points of contact.

Judges also recommend that courts identify which tribes are receiving court notices and appearing in court hearings, both in person and by phone, to get a better sense of which tribes most frequently appear before them.

A judicial officer adds that "judges who handle ICWA cases should get to know the tribes who appear before them." She recognizes that this can be challenging when ICWA cases are spread across judges in a court. This is why she sees value in the practice of consolidating ICWA cases before one judge, so that the "judge is much more willing to take the time to educate herself on the tribes in her area and form relationships."

Another judge adds that it is essential for *all* courts to know if they have any local tribes in their jurisdiction. In getting to know local tribes and their leaders, it is "important to

recognize that when you are working with the indigenous people of California and the United States, they have been systematically traumatized [by us] for generations." This judge has personally engaged with tribal communities in her county for years. Regardless of her efforts, she knows that as a member of the "dominant white culture," she will always be viewed by some tribal members as a representative of the state that oppressed them. She accepts and understands this perception, describing how "for those of us in the court system and in society more broadly, it is easy to relay blame on someone else, but you need recognize what you represent" to tribes in this state.

10. In some instances, judges should regard ICWA advocates as pro per litigants.

In the same way that judges will provide very basic assistance to pro per litigants who do not have legal training, some tribal representatives would appreciate basic guidance from judges when it is clear that ICWA advocates are not familiar with submitting evidence, and calling or cross-examining witnesses. Along these lines, some non-attorney ICWA advocates stated that they would benefit from basic courtroom training. Greater guidance as to their rights and roles in a courtroom, and the rules and procedures of the courts would be very helpful for some advocates. One tribal advocate states that a training or "crash course" on court forms would be useful for advocates without legal training, too.

Due to their legal training, lawyers for tribes do not describe such issues when trying to engage in the court process. Tribal representatives suggest that judges, who may not be doing so now, should take a moment to ask the ICWA advocate what the tribe's position may be on any particular issue throughout the course of the trial. Some advocates do not know when or how to interject to explain the tribe's position.

Judicial Input:

Says one judicial officer in response to this suggestion, it is "incumbent upon a judge to make sure parties understand what is going on. The judge should, when necessary explain [matters] as they would to any party." For example, whenever this judge has parents in her cases that do not understand what is going on, she takes a moment to explain what is happening. She states, "the last thing you want is for people to leave the room having no idea what just happened." While she runs a formal courtroom, she wants the experience to be welcoming and does not want to intimidate parties, especially those for whom the experience might be especially traumatic.

11. Development of ICWA Courts

Generally speaking, tribal representatives have found that the regularly-appearing, non-tribal attorneys and child welfare workers in ICWA courts tend to have a strong understanding of ICWA. Although there is no formal definition of an ICWA court, here we will use it to describe a court that has particular expertise and focus on ICWA cases and where those cases are concentrated. This is important because, in many courts that do not specialize in ICWA, tribal representatives are frequently in a position in which they have to educate county partners as to

how ICWA operates and the law's basic expectations, as described above in *#3 Training as to the historical significance and importance of ICWA.*

While the state's ICWA courts have their strengths, some tribal representatives explain how ICWA implementation challenges still remain. They suggest for those developing an ICWA court to look at the nature of the appeals that arise from whichever ICWA court is chosen as a model. The representatives explain how it is not safe to assume that any particular court is better at addressing or resolving ICWA concerns simply because it is an ICWA court.

With this in mind, some tribal attorneys recommend that, if a court plans to develop an ICWA court, it should look at various specialty court models across the country.[10] In addition to California's courts, tribal representatives suggest looking at models from out of state such as in Montana, Minnesota, Arizona, and Colorado. One tribal attorney notes that the hiring and inclusion of Indian staff, court clerks, and social workers made a substantial positive difference in the implementation of ICWA in Montana.

12. Same access to the court and court related systems as other participants.

Some tribal representatives would like greater access to court information and systems. For example, some courts may utilize online portals to hold reports and documents. If that is the case and child welfare agencies can access them, tribal representatives should be given access to information pertaining to their ICWA cases. This would enhance communication with the tribe, which as state above, is a critical component of effective ICWA implementation in courts.

[10] Other states have implemented innovative ICWA practices that California courts may benefit from. Tribal representatives identified Oregon and Washington as states that have particularly innovative ICWA implementation practices that California could benefit from. Specifically, an ICWA advocate describes how Oregon courts across the board do a good job of getting tribal input and evaluating active efforts. She describes how the court will devote a portion of its proceedings to active efforts, such that "instead of a check box on an order, they have a conversation [about active efforts]." From the advocate's personal experience in California, she describes how unless the tribal party interjects, the courts often do not pay great attention to active efforts. Some tribal representatives reported that Washington's courts exhibit great deference to the tribe. These and likely other examples of other jurisdictions' ICWA implementation practices should be further explored to gauge where California's state systems can improve and what innovative strategies they can learn from, as it pertains to ICWA.

SPOTLIGHT: MENDOCINO COUNTY PRESIDING JUDGE ANN MOORMAN

Tribal representatives consistently described Presiding Judge Ann Moorman of Mendocino County Superior Court as a judicial officer who upholds the integrity and spirit of the Indian Child Welfare Act, and shows deference to tribal parties. Her court practices, policies, and outlook are presented here to better highlight how individual judicial officer can ensure tribes are treated like equal parties.

Mendocino County is home to many federally recognized tribes that have a significant presence in the local community. The tribes include Cahto Indian Tribe of the Laytonville Rancheria, Coyote Valley Reservation, Guidiville Rancheria, Hopland Band of Pomo Indians of the Hopland Rancheria, Manchester Band of Pomo Indians of the Manchester Rancheria, Pinoleville Pomo Nation, Pit River Tribe, Potter Valley Tribe, Round Valley Indian Tribes of the Round Valley Reservation, Redwood Valley Rancheria, and Sherwood Valley Rancheria of Pomo Indians.

In reflecting on her work overseeing child welfare cases, Judge Moorman describes how she is cognizant of the trauma that tribal communities, both in her county and throughout the state, have suffered, and how the courts were historically complicit in causing this harm. Courts upheld state laws that oppressed Indian tribes and diminished their sovereignty – including the legalization of Indian slavery. [xxviii] Indians were denied basic legal rights and banned from testifying in court.[xxix] She acknowledges how, even today, the court "is not always a comfortable place for Indian families."

When Judge Moorman began overseeing the dependency calendar in Mendocino County, she implemented a series of changes to create a court environment that best serves all parties – especially tribal parties. For example, she installed a large horseshoe table in the center of the courtroom that all parties sit at, facing her, to promote a collaborative environment. Judge Moorman invites ICWA advocates to this table, where they join attorneys and other experts who are involved in child welfare case, including ICWA. Additionally, she includes tribal parties in morning calendar call because, like social workers, attorneys, and other service providers, Judge Moorman believes tribal representatives are critical for ICWA cases.

Judge Moorman also took the bold step of removing the portraits of the court's past (largely older, white, and male) judges and replaced them with large photos of oak trees in grasslands to create a calming feeling in the courtroom. She wanted to create a space that emphasized nature, as opposed to the traditional, formal, and intimidating "energy" that is typically characteristic of courtrooms and that was promoted by the portraits.

During ICWA court proceedings in her court, tribal representatives describe how Judge Moorman, as a matter of routine, seeks the tribe's position on each matter at hand. She intentionally seeks the tribe's position on active efforts, case planning, placement, qualified expert witnesses, permanency planning, and other essential elements of child welfare cases involving Indian children. One ICWA advocate describes how it can be "intimidating to be in a room full of

attorneys, but [Judge Moorman] always makes sure that I sit up front and always makes a point to ask me about my opinion." Judge Moorman explains how tribal representatives often have a unique perspective on the case at hand and can share insight into a family's situation that other stakeholders may not have.

Judge Moorman has been described as open minded and supportive of the tribes, evidenced by her strong understanding of ICWA and active implementation of ICWA laws and procedures in her courtroom. Another tribal advocate describes feeling "empowered" by Judge Moorman.

Judge Moorman is cognizant of the fact that some tribes have limited resources or are traveling from far distances to get to court. Tribal representatives describe how she is accommodating, when possible, by ensuring tribes can appear remotely. When appropriate, Judge Moorman may also arrange for the court calendar to have all of a particular tribe's cases appear on the same day, so that tribal representatives do not have to travel multiple times in the same week for their cases. As a further courtesy to the tribe and the tribal representatives, Judge Moorman has been known to call all ICWA cases in a row in recognition of the value of the representative's time and resources. She is cognizant that tribal representatives may have additional court hearings in other jurisdictions.

Another court practice that Judge Moorman employs is the requirement that tribes, county counsel, social services agency staff, minors and/or their counsel, and parents' counsel engage in "pre-court meetings" – similar to traditional "meet and confers." Through these meetings, parties exchange information and discuss issues prior to the start of the court hearing. Here, parties can effectively address issues such as services, case planning, and placement. In addressing these issues before proceedings begin, the parties are able to preserve valuable court time and focus their attention on pressing issues related to an Indian child's wellbeing.

Judge Moorman also engages in and leads stakeholder meetings about the Indian Child Welfare Act. Mendocino County holds quarterly ICWA roundtables with child welfare agencies and ICWA representatives from local tribes. Judge Moorman has attended these meeting since she first came to the dependency court. She finds these meetings to be enlightening, for they help her better understand areas for improvement in ICWA implementation beyond the courtroom. Through these meetings, the court and county agencies have effectively incorporated ICWA representatives and tribes into their numerous systems. For example, as a result of these meetings, tribes achieved improved access to document delivery systems within the county. In addition to engaging in the quarterly ICWA roundtables, Judge Moorman maintains a series of monthly dependency calendar meetings she inherited from her predecessor. She leads these meetings and has found them to be a useful forum for the court, child welfare agencies, and tribes to come together and identify areas for improvement of the court process.

In upholding ICWA in her courtroom, Judge Moorman views the cultural component of

Indian heritage, like the law itself, deeply important to the process. However, her cultural competency does not stop with ICWA procedures and rules. She goes beyond the basics of ICWA; for example, she allows tribal ceremonies in her courtroom when tribal families request them. She views these ceremonies as a significant way to integrate culturally sensitive and trauma-informed practices to better serve tribal youth, families, and elders in the court. While the ceremonies may take up court time, she finds such steps meaningful to tribal participants and an important element of ICWA implementation.

Beyond practices in her own courtroom, Judge Moorman strongly encourages her judicial colleagues to engage with their local tribes, learn more about local tribal culture, practices, and traditions, and to ensure that ICWA cases are treated with a great deal of awareness and sensitivity for the benefit of all. Recently, Judge Moorman sought input from the tribal leaders in her community by asking an Indian elder what he felt judges should know when overseeing ICWA cases, working with Indian people, and sovereign Indian nations. His response included the following suggestions, some of which have been addressed in this guide:

LESSONS FROM A TRIBAL ELDER TO THE COURT

- Understand the meaning of tribal and Indian
- Know how many tribes there are in the county
- Know the name of each tribe in the county
- Know what “federally recognized tribal member” means
- Know what "disenrolled member" means
- Know what “tribally recognized” means
- Know what a “tribal roll number” means
- Have a basic understanding of a Tribal Council and its role
- Understand what "tribal sovereignty" is and how it works
- Understand the meaning of ceremony and the different types of tribal ceremonies in use in the county
- Be able to name some of the ceremonies used in tribal communities
- Understand what traditional medicines are used and the name for some of the traditional medicines
- Learn what tribal services and support each tribe offers regarding social, substance abuse prevention, education, ceremonies, and more
- Understand how to approach a tribal community during an ICWA transaction and how to appropriately transport an Indian child to and from services
- Know who to contact and where to check in before/during a tribal community visit
- Understand historical trauma as it pertains to an ICWA case
- Permit ICWA advocates from tribes to speak in court hearings

- Understand that not all tribes have an ICWA advocate
- Know that some children do not have tribes that they are enrolled with but are still eligible for ICWA services
- Know what the BIA (Bureau of Indian Affairs) is and how they assist tribes in ICWA cases

ISSUES OUTSIDE OF THE JUDICIAL BRANCH'S PURVIEW

The following issues also emerged during our conversations with tribal representatives. While they are outside of the court's sphere of influence in implement ICWA, we offer them here for other agencies and institutions to review, consider, and verify.

FOR LEGISLATIVE CONSIDERATION

1. *Lack of legal counsel has access to justice consequences for tribes.*

Existing law requires the appointment of legal counsel for specified parties within child welfare proceedings, including the parents, guardians, and the children. However, the tribes, while parties to these cases under ICWA, are not appointed legal counsel. Without legal counsel, tribes are at a significant disadvantage in the courtroom. Due to the lack of legal training, some ICWA advocates experience difficulty submitting evidence to the court, calling witnesses, and cross-examining witness. In contested cases, some tribes will obtain an attorney for specific proceedings, but many tribes are not able to afford the cost and do not.

To resolve this need, the *ICWA Compliance Report* recommended the development of a pilot project, that would use state funding to provide free legal counsel to tribes in dependency cases.[xxx] AB 685, introduced by Assembly Member Eloise Reyes in 2020, sought to address this recommendation. [xxxi] However, due to the emergence of COVID-19, the legislation will not move forward this session. AB 685 would have required the California State Bar to administer grants to qualified legal services in order to provide legal counsel to tribes in child welfare cases governed by ICWA.

RELATING TO COUNTY CHILD WELFARE AGENCIES

1. *Interpersonal relationships improve ICWA compliance with county child welfare workers.*

ICWA advocates describe how interpersonal relationships play an important role in improving ICWA implementation. For example, when they have spent time, in some cases years, developing personal relationships with county child welfare workers, they have experienced greater ICWA understanding and compliance on the part of welfare workers. As a result of these interpersonal relationships, ICWA advocates have experienced improvements with receiving notice, initial contact, and other communications with county agencies.

Some tribal attorneys and advocates caution that ICWA should not be complied with solely on the basis of interpersonal relationships however. It should not fall upon the tribal advocates and attorneys to develop strong relationships for ICWA to be implemented or complied with fully. Those tribes that reside outside of California, for example, or who are traveling from a different county within California, lack the ability to develop interpersonal relationships with county child welfare workers. Nevertheless, their representatives are entitled to the rights and access granted to them by ICWA.

2. *Room for improvement in initial contact, active efforts, and case planning etc.*

Across counties, there is minimal uniformity in the quality of child welfare workers' active efforts and case planning consultation with tribes. An ICWA advocate in one county described how the establishment of a memorandum of understanding between the local tribe and the county child welfare department resulted in improved practices. The MOU, still in place, sets out agreed upon expectations as to how initial contact, active efforts, case planning, and more should be carried out. In this way, the tribe and the local child welfare agency come to an understanding as to what ICWA practices should look like in the county and what they can expect from one another.

3. *Other states have implemented effective ICWA strategies.*

Other state practices, as they relate to ICWA, may offer useful guidance for California's child welfare agencies to consider. Some tribal attorneys and advocates reported that Oregon and Washington, in particular, have effective ICWA strategies. They described Oregon as being generally more consistent in its child welfare practices with a strong record on active efforts and culturally relevant case plans by referring tribal families to local Indian services and resources. Further, there appears to be less county-by-county variation in Oregon, especially when compared to California. In terms of Washington, some tribal representatives reported that the state's child welfare agencies do a good job of recognizing, from the outset, that there is an Indian child in any given case.

CONCLUSION

This *ICWA Best Practices Guide for California Courts and Judicial Officers* responds to the findings of the *ICWA Compliance Task Force Report to the California Attorney General's Bureau of Children's Justice* (2017), and aims to supplement existing resources to assist courts' implementation of AB 3176, and the Indian Child Welfare Act, more broadly. It is through this work that we hope to further facilitate conversations between local courts, child welfare stakeholders, and tribes regarding court policies and practices. Tribal representatives took the time to share with us the ways in which existing court practices inhibit their ability to exercise their rights in ICWA cases. Further, judges who are committed to the robust implementation of ICWA in their courtrooms shared practices and insights for their judicial and court colleagues to apply when appropriate.

As has been reiterated throughout this guide, there is no one size fits all solution to the issues presented here. Both California's greatest strength and challenge is its vast and varied demographic and geographic makeup. Finding a way to equitably meet the needs of a large state with a diverse population and varied local contexts remains one of the Judicial Council's priorities. It is only through listening to tribal representatives, acknowledging the problems that they face in courts, and encouraging a dialogue among tribes, courts, and other stakeholders, that the judicial branch will adequately address and remove these barriers to equal access to justice.

This guide is just one step of many to continue to strengthen and improve the implementation of ICWA in state courts. It is our hope that it becomes a tool for judges and courts to improve their practices and for tribal representatives to improve outcomes for Indian children and families involved in the California court system.

COURTS REPRESENTED IN THIS GUIDE

The tribal representatives interviewed for this guide reported that they represent their tribes in at least 36 of California's 58 counties. Some representatives did not feel comfortable reporting the exact counties within which they have worked on the tribe's behalf. The tribal representatives reported that they represented in, at least, the following California superior courts (highlighted and in alphabetical order):

Alameda
Butte
Calaveras
Colusa
Contra Costa
Del Norte
El Dorado
Fresno
Glenn
Humboldt
Kern
Lake
Los Angeles
Madera
Marin
Mendocino
Napa
Orange
Placer
Plumas
Riverside
Sacramento
San Bernardino
San Diego
San Joaquin
Shasta
Siskiyou
Solano
Sonoma
Stanislaus
Sutter
Tehama
Tulare
Tuolumne
Yolo
Yuba

SEE APPENDIX A FOR SAMPLES OF LOCAL RULES AND STANDING ORDERS ACROSS CALIFORNIA

[i] Judicial Council of California, Center for Families, Children, & the Courts, *Native American Statistical Abstract: Population Characteristics* (March 2012), *https://www.courts.ca.gov/documents/Tribal-ResearchUpdate-NAStats.pdf*.
[ii] United States Department of the Interior, Bureau of Indian Affairs, *Guidelines for Implementing the Indian Child Welfare Act* (December 2016), *https://www.bia.gov/sites/bia.gov/files/assets/bia/ois/pdf/idc2-056831.pdf*.
[iii] It is important to note that interviews were, for the most part, conducted before the emergence of COVID-19 pandemic. COVID-19 has since created challenges for the courts and tribes, which this guide does not address.
[iv] California ICWA Compliance Task Force, *Report to the California Attorney General's Bureau of Children's Justice* (2017), *https://theacademy.sdsu.edu/wp-content/uploads/2015/06/icwa-compliance-task-force-final-report-2017.pdf*.
[v] California ICWA Compliance Task Force, *Report to the California Attorney General's Bureau of Children's Justice* (2017), *https://theacademy.sdsu.edu/wp-content/uploads/2015/06/icwa-compliance-task-force-final-report-2017.pdf*.
[vi] California ICWA Compliance Task Force, *Report to the California Attorney General's Bureau of Children's Justice* (2017), *https://theacademy.sdsu.edu/wp-content/uploads/2015/06/icwa-compliance-task-force-final-report-2017.pdf*.
[vii] Found at 25 C.F.R. Part 23
[viii] California ICWA Compliance Task Force, *Report to the California Attorney General's Bureau of Children's Justice* (2017), *https://theacademy.sdsu.edu/wp-content/uploads/2015/06/icwa-compliance-task-force-final-report-2017.pdf*.
[ix] California ICWA Compliance Task Force, *Report to the California Attorney General's Bureau of Children's Justice* (2017), *https://theacademy.sdsu.edu/wp-content/uploads/2015/06/icwa-compliance-task-force-final-report-2017.pdf*.
[x] Judicial Council of California, *ICWA Job Aids*, https://www.courts.ca.gov/8103.htm (as of June 19, 2020).
[xi] Judicial Council of California, *The Strategic Plan for California's Judicial Branch* (2006), *https://www.courts.ca.gov/documents/CAJudicialBranch_StrategicPlan.pdf*.
[xii] Judicial Council of California, *The Strategic Plan for California's Judicial Branch* (2006), *https://www.courts.ca.gov/documents/CAJudicialBranch_StrategicPlan.pdf*.
[xiii] Judicial Council of California, Center for Families, Children, & the Courts, *Native American Statistical Abstract: Population Characteristics* (March 2012), *https://www.courts.ca.gov/documents/Tribal-ResearchUpdate-NAStats.pdf*.
[xiv] Environmental Protection Agency, *California Tribal Lands and Reservations* (2011), https://www3.epa.gov/region9/air/maps/ca_tribe.html (as of June 22, 2020).
[xv] Judicial Council of California, *Invitation to Comment: Indian Child Welfare Act (ICWA): Tribal Information Form (SPR20-30)*(June 2020), *https://www.courts.ca.gov/documents/spr20-30.pdf*.
[xvi] California ICWA Compliance Task Force, *Report to the California Attorney General's Bureau of Children's Justice* (2017), *https://theacademy.sdsu.edu/wp-content/uploads/2015/06/icwa-compliance-task-force-final-report-2017.pdf*, 16.
[xvii] Judicial Council of California, *Invitation to Comment: Indian Child Welfare Act (ICWA): Tribal Information Form (SPR20-30)*(June 2020), *https://www.courts.ca.gov/documents/spr20-30.pdf*.
[xviii] California ICWA Compliance Task Force, *Report to the California Attorney General's Bureau of Children's Justice* (2017), *https://theacademy.sdsu.edu/wp-content/uploads/2015/06/icwa-compliance-task-force-final-report-2017.pdf*, 61.
[xix] Tyler Technologies, *Odyssey Case Manager*, https://www.tylertech.com/products/odyssey/case-manager (as of June 19, 2020).
[xx] State of North Dakota, *Juvenile Court Best Practice Manual* (February 5, 2020), https://www.ndcourts.gov/Media/Default/other-courts/juvenile-court/DSYI/Best%20Practices%20Manual.pdf.
[xxi] State of North Dakota, *Juvenile Court Best Practice Manual* (February 5, 2020), https://www.ndcourts.gov/Media/Default/other-courts/juvenile-court/DSYI/Best%20Practices%20Manual.pdf, 22.
[xxii] CourtCall, *Our Mission*, https://courtcall.com/what-is-courtcall/appear-in-court-by-phone/ (as of June 19, 2020).
[xxiii] AB 686 (Ch. 434, stats. 2019).
[xxiv] AB 3176 (Ch. 833, stats. 2018).

[xxv] California ICWA Compliance Task Force, *Report to the California Attorney General's Bureau of Children's Justice* (2017), https://theacademy.sdsu.edu/wp-content/uploads/2015/06/icwa-compliance-task-force-final-report-2017.pdf, 96.
[xxvi] United States Department of the Interior, Bureau of Indian Affairs, *Pacific Region Office Overview* (2018), https://www.indianaffairs.gov/sites/bia.gov/files/assets/bia/pacreg/california%20map%202018_large.pdf.
[xxvii] United States Department of the Interior, Bureau of Indian Affairs, *Tribal Leaders Directory,* https://www.bia.gov/bia/ois/tribal-leaders-directory/ (as of June 12, 2020).
[xxviii] Native American Heritage Commission, Short Overview of Californian Indian History, http://nahc.ca.gov/resources/california-indian-history/ (as of June 12, 2020).
[xxix] Native American Heritage Commission, *Short Overview of Californian Indian History*, http://nahc.ca.gov/resources/california-indian-history/ (as of June 12, 2020).
[xxx] California ICWA Compliance Task Force, *Report to the California Attorney General's Bureau of Children's Justice* (2017), https://theacademy.sdsu.edu/wp-content/uploads/2015/06/icwa-compliance-task-force-final-report-2017.pdf, 95.
[xxxi] AB 685, as revised May 16, 2019, Reyes. Juveniles: Indian tribes: counsel.

APPENDIX A:

SAMPLES: LOCAL RULES AND STANDING ORDERS ACROSS CALIFORNIA

SUPERIOR COURT
of
CALIFORNIA
COUNTY OF SAN DIEGO

LOCAL RULES

Effective January 1, 2020

or (2) by order of the juvenile court upon the filing of a Request for Disclosure of Juvenile Case File on Judicial Council form JV-570.
(Adopted 1/1/1999; Renum. 7/1/2001; Rev. & Renum. 1/1/2002; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2011; Rev. 1/1/2013; Rev. 1/1/2014; Rev. 1/1/2017; Rev. 1/1/2018; Rev. 1/1/2020)

Rule 6.6.2

Disclosure of Juvenile Court Records to Persons and Agencies Not Designated in Welfare and Institutions Code Section 362.5, 827, 827.10, or 827.12 – Request for Disclosure (JV-570) Required

(For procedures relating to prehearing discovery of dependency records by the parties to a dependency proceeding and their counsel, see rule 6.1.7.)

Except as otherwise provided in Chapter Six of these rules, if a person or agency not designated in Welfare and Institutions Code section 362.5, 827, 827.10, or 827.12 seeks access to juvenile court records, including documents and information maintained by the court, the Probation Department, or the HHSA, that person or agency must file a Request for Disclosure of Juvenile Case File (hereinafter, petition) on Judicial Council form JV-570. The petition must be filed with the clerk in the Juvenile Court Business Office or other clerk designated to receive such petitions. The petition must comply with California Rules of Court, rule 5.552 and with these rules. If disclosure is requested regarding a person who has both a dependency and a juvenile justice record, two separate requests must be filed and served.

At least 10 calendar days before the petition is submitted to the court, the petitioner must give notice as described in California Rules of Court, rule 5.552(c). Notice must be served either personally or by first-class mail of a copy of the completed Request for Disclosure of Juvenile Case File (Judicial Council form JV-570), a Notice of Request for Disclosure of Juvenile Case File (Judicial Council form JV-571), and a blank copy of Objection to Release of Juvenile Case File (Judicial Council form JV-572).

For juvenile justice cases, service must be to the person who is the subject of the record; the attorney of record for the person who is the subject of the record if that person is still a ward of the court; the parent(s) or guardian(s) of the person who is the subject of the record if that person is under 18 years of age; the Indian tribe, if any; the District Attorney, Juvenile Division; and the Juvenile Probation Department, Attn: Probation Support Manager.

For dependency cases, service must be to the person who is the subject of the record, if that person is 10 years of age or older; the attorneys of record for the person who is the subject of the record and for his or her parents if that person is still a dependent of the court; the parent(s) or guardian(s) of the person who is the subject of the record; the CASA volunteer, if any; the Indian tribe, if any; County Counsel, Juvenile Dependency Division; and the Health and Human Services Agency/CWS, Attn: Legal Unit.

For nonminor dependency cases, service must be to the nonminor dependent; the attorney for the nonminor dependent; the District Attorney, if the nonminor dependent is also a delinquent ward; the CASA volunteer, if any; the Indian tribe, if any; County Counsel, Juvenile Dependency Division; the Health and Human Services Agency/CWS, Attn: Legal Unit; the District Attorney, Juvenile Division, if the nonminor dependent is also a ward; and, if the parents are still receiving reunification services, the parents of the nonminor dependent and their attorneys. (See Welf. & Inst. Code, § 362.5; Cal. Rules of Court, rule 5.552(c).)

Notice to the person who is the subject of the record is not required if a written waiver of such notice is obtained from the person (if now an adult) or a person authorized to act on the person's behalf if the person is a child. For good cause shown, the court may waive such notice.

A completed Proof of Service–Request for Disclosure (Judicial Council form JV-569), Notice of Request for Disclosure of Juvenile Case File (Judicial Council form JV-570), and Disclosure of Juvenile Court Records – Protective Order (SDSC form JUV-263) must be filed with the court. If the petitioner does not know the identity or address of any of the parties, the person should check the appropriate boxes in item 2 on the Proof of Service – Request for Disclosure (Judicial Council form JV-569), and the clerk will complete the service.

If the records are sought for use in a legal action which is not a juvenile court proceeding, the petitioner must also give notice by personal service or first-class mail to all parties in that action. The petitioner must attach to the JV-570 a copy of the complaint or petition from the separate action.

The petition may be supported by a declaration of counsel and/or a memorandum of points and authorities.

If the petition is granted, the court will issue a protective order (SDSC form JUV-263) specifying the records to be disclosed and the procedure for providing access and/or photocopying. (Cal. Rules of Court, rule 5.552(d).) Persons or agencies obtaining records under such authorization must abide by the terms of the protective order. Any unauthorized disclosure or failure to comply with the terms of the order may result in vacation of the order and/or may be punishable as contempt of court. (See Welf. & Inst. Code, § 213.)

This rule is not intended to replace, nullify, or conflict with existing laws (including Pen. Code, § 11167, subd. (d)) or the policies of the HHSA, the Probation Department, or any other public or private agency. This rule does not prohibit the release of general information on Juvenile Court policies and procedures.
(Adopted 1/1/1999; Renum. 7/1/2001; Rev. 1/1/2002; Rev. 1/1/2005; Rev. 1/1/2007; Rev. 1/1/2008; Rev. 1/1/2010; Rev. 1/1/2012; Rev. 1/1/2013; Rev. 1/1/2014; Rev. 1/1/2016; Rev. 1/1/2018; Rev. 1/1/2020)

Rule 6.6.3

Health Care for Children in HHSA Custody; Disclosure of Health Care Information

A. When a child is in the custody of the HHSA prior to the detention hearing, the HHSA may obtain a comprehensive health assessment of the child as recommended by the American Academy of Pediatrics to ensure the health, safety, and well-being of the child. No consent or court order is required in a medical emergency. (Welf. & Inst. Code, § 369, subd. (d).) In the absence of an emergency, the social worker will obtain the parent/guardian's consent prior to the assessment and will inform the parent/guardian of the right to be present for the assessment. If the social worker cannot obtain the consent of the parent/guardian, the social worker will seek a court order authorizing the assessment, using forms SDSC JUV-255, Petition for Medical, Mental Health, Dental, and/or Other Remedial Care, and SDSC JUV-256, Order on Petition for Medical, Mental Health, Dental, and/or Other Remedial Care. The assessment may include one or more of the following, as is necessary and appropriate to meet the child's needs:

1. A medical history which is as complete as possible;
2. A physical examination by a licensed medical practitioner;
3. A developmental evaluation;
4. A mental health status evaluation by a licensed mental health clinician;
5. Emergency dental care by a licensed dentist; and/or
6. Clinical laboratory tests or x-rays as deemed necessary by the examining physician or dentist for evaluation of the child's health status.

B. Before dependency proceedings have been initiated and during the course of those proceedings, the HHSA may obtain ongoing routine health care, including immunizations and routine dental care, as recommended by the American Academy of Pediatrics, and mental health evaluations, counseling, and treatment for a child in the custody of the HHSA, as is necessary to protect and promote the child's physical and emotional well-being.

C. Information concerning any health care provided pursuant to this rule may be released to the HHSA, the child's attorney, the child's CASA, if any, other health care providers, Regional Centers, or schools, if needed for treatment, treatment planning, counseling, and/or educational purposes consistent with promoting the child's physical and emotional well-being, before or after the detention hearing, and throughout the course of the dependency proceedings.

D. This rule does not apply to confidential privileged information for dependent children, but it does authorize the release of court-ordered psychological evaluations, initial treatment plans (ITPs) and treatment plan updates (TPUs) requested by the HHSA.
(Adopted 1/1/2015; Rev. 1/1/2016; Rev. 1/1/2018; Rev. 1/1/2020)

Rule 6.6.4

Disclosure of Juvenile Court Records - Petition to View Records (SDSC JUV-004) and Stipulation (SDSC JUV-237) Required

A. The persons and agencies designated in Welfare and Institutions Code sections 362.5, 827, 827.10, and 827.12 will be given access to juvenile court records upon filing a Petition to View Records (SDSC JUV-004) and a Stipulation Regarding Inspection, Copying and Non-dissemination of Juvenile Records Without Court Order (SDSC JUV-237). In addition, the following may have access to dependency records and/or obtain photocopies of dependency records without a prior court order upon filing a JUV-004 and a JUV-237, subject to the conditions specified, on the basis that 1) disclosure will be in the best interest of the child whose records are sought and 2) the information contained in those records is necessary and relevant to a juvenile dependency or juvenile justice proceeding; a civil or criminal investigation or proceeding; a proceeding involving child custody or visitation; a proceeding involving adoption, guardianship, or emancipation of a minor; an action to establish parentage; an administrative proceeding regarding foster home licensure; a proceeding involving probate or conservatorship; or a proceeding involving domestic violence:

1. Judicial officers of the San Diego Superior Court, Family Division, when the child who is the subject of the records, or his or her sibling, is also the subject of custody or visitation proceedings under Family Code section 3000 et seq. (see Fam. Code, §§ 3011, subd. (b), 3020; Welf. & Inst. Code, § 827.10).
2. County Counsel, for the purpose of representing HHSA in a civil action.

3. San Diego County Probation Officers, when the child who is the subject of the records is also the subject of juvenile court proceedings under Welfare and Institutions Code section 601 or 602. In such cases, which are subject to the court's Protocol for Coordination in Crossover Youth Matters, the following persons may have access to the child's juvenile justice records, including minute orders, and/or may obtain photocopies of the juvenile justice records without a prior court order: [1] HHSA social workers, [2] all dependency attorneys actively participating in juvenile proceedings involving the child, and [3] the child's CASA, if any. Copies of any joint assessment report, prepared pursuant to Welfare and Institutions Code section 241.1 and filed with the court, must be provided to the D.A., the child's defense attorney and dependency attorney, County Counsel, the HHSA social worker, the probation officer, any CASA, and any other juvenile court having jurisdiction over the child.

4. CASAs (Voices for Children, Inc.), as provided under Welfare and Institutions Code sections 105, 107. A CASA may have access to the records of a nonminor dependent only with the explicit written and informed consent of the nonminor dependent.

5. An Indian child's tribe and the Bureau of Indian Affairs, as provided under title 25 United States Code chapter 21 [Indian Child Welfare Act] and Welfare and Institutions Code section 827, subdivision (f).

6. Family Law Facilitators and employees or agents of San Diego Superior Court Family Court Services.

7. Employees or agents of San Diego County Behavioral Health Services (Health & Human Services Agency).

8. Any licensed psychiatrist, psychologist, or other mental health professional ordered by the San Diego County Superior Court, Family Division, to examine or treat the child or the child's family.

9. Any hospital providing inpatient psychiatric treatment to the child, for purposes of treatment or discharge planning.

10. Any government agency engaged in child protection.

11. The San Diego County Victim Assistance Program and the State Victim Compensation Program, for the purpose of providing services to a victim of or a witness to a crime.

12. The Juvenile Parole Board of the California Department of Corrections and Rehabilitation, Division of Juvenile Justice.

13. The California Board of Parole Hearings, as provided under Penal Code section 11167.5, subdivision (b)(9).

14. Members of the San Diego County Juvenile Justice Commission.

15. The San Diego County Board of Supervisors or their agent(s), for the purpose of investigating a complaint from a party to a dependency proceeding.

16. Public and private schools, for the sole purpose of obtaining the appropriate school placement for a child with special education needs pursuant to Education Code section 56000 et seq.

17. Investigators and investigative specialists employed by the San Diego County District Attorney and assigned to the Child Abduction Unit, when seeking the records of a child who has been reported as detained or concealed in violation of Penal Code sections 278 and 278.5, for the sole purpose of investigating and prosecuting persons suspected of violating Penal Code sections 278, 278.5, and related crimes.

18. Investigators employed by attorneys who represent parties in dependency proceedings, when seeking records that may be released to the attorney without a court order under Welfare and Institutions Code section 827.

19. The Mexican Consulate, when seeking the records of a child who is in protective custody and/or is before the court for a dependency action, and either: [a] is a Mexican national, or [b] has relatives (as defined in Welf. & Inst. Code, § 319) who are Mexican nationals.

20. The San Diego County Regional Center.

21. The San Diego County Probation Department, when performing its duty under Penal Code section 1203.097 to certify treatment programs for domestic violence offenders, for purposes of documenting a treatment program's failure to adhere to certification standards and identifying serious practice problems in such treatment programs, provided that in any proceeding for the suspension or revocation of a treatment provider's certification or in any document related thereto, the Probation Department must not disclose any child's name.

22. Judicial officers outside of the County of San Diego, for the purpose of communicating about a case pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). (See Fam. Code, § 3410.)

Persons seeking access to and/or photocopies of dependency records under this rule must fill out, sign, and submit to the clerk in the Juvenile Court Business Office (or other clerk designated to receive such petitions) a Petition to View Records and/or Request for Copies (SDSC form JUV-004) and Stipulation Regarding Inspection, Copying and Non-dissemination of Juvenile Records Without Court Order (SDSC form JUV-237). The completed forms will be kept in the file that is the subject of the Petition and/or Request.

"access" may refer to permission to enter certain facilities which are not open to the public and/or permission to observe, interview, film, photograph, videotape, or record the voices of children in such facilities.

Notice to counsel for the child is required to request permission to photograph, record, broadcast, publish, or allow media contact with a dependent child or his or her personal information, including publication of the child's name, outside of the juvenile court setting. Absent extenuating circumstances, notice must be received by counsel for the child at least five court days before the request is filed with the juvenile court. Notice must be in writing and include: the child's name; the name of all individuals requesting access to the dependent child (e.g., interviewer(s), reporter(s), photographer(s), technical crew) and their professional affiliation(s); the intended or anticipated audience for the published material; the date and length of time the contact is expected to last; the length of time the permission to publish is requested to remain valid; and all types of media outlets and publications, including any websites, other internet locations, and social media sites, that will receive, publish, or broadcast the contact with, or personal information about, the child. Permission that is intended to include coverage of activities or events must also include the event name, sponsoring organization(s), event date and length, and the purpose of the event (including any intended use in fundraising, donor or volunteer recruitment activities).

Forms and copies of the Juvenile Court Media Policy are available from Juvenile Court Administration, which is in room 254 at the Meadow Lark courthouse.

(Adopted 1/1/2013; Rev. 1/1/2016; Rev. 1/1/2017)

CHAPTER 7
PROCEDURES FOR APPOINTING COUNSEL

Rule 6.7.1

Attorneys for Children

At the earliest possible stage of proceedings, the court must appoint counsel for the child as provided in Welfare and Institutions Code section 317 and California Rules of Court, rule 5.660. Appointed counsel and/or the court-appointed special advocate (CASA) must continue to represent the child at all subsequent proceedings unless properly relieved by the court.

The Child Abuse Prevention and Treatment Act (Pub.L. No. 93-247) provides that in all cases in which a dependency petition has been filed and counsel has been appointed for the child, the attorney for the child will be the guardian ad litem for the child in the dependency proceedings unless the court appoints another adult to serve as the child's guardian ad litem. If no counsel is appointed for the child, or if at any time the court determines a conflict exists between the role and responsibilities of the child's attorney and that of a guardian ad litem, or if the court determines it is best for the child to appoint a separate guardian ad litem, the court will appoint another adult as the guardian ad litem for the child. The guardian ad litem for the child may be any attorney or a CASA.

Notwithstanding Welfare and Institutions Code section 317, subdivision (g), the San Diego County juvenile dependency court appoints counsel from Children's Legal Services of San Diego (CLS) to represent children pursuant to the contract entered into between CLS and the Judicial Council of California. The public defender is not available for juvenile dependency court appointments.

(Adopted 1/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2013; Rev. 1/1/2014; Rev. 1/1/2016; Rev. 1/1/2017)

Rule 6.7.2

Attorneys for Parents or Guardians

At the detention or initial hearing, the court must appoint counsel for the mother, and counsel for the presumed father, guardian, or Indian custodian as provided in Welfare and Institutions Code section 317, subdivisions (a) and (b). Appointed counsel will continue to represent the client at all subsequent proceedings unless properly relieved by the court.

Notwithstanding Welfare and Institutions Code section 317, subdivision (h), the San Diego County juvenile dependency court appoints counsel from Dependency Legal Services San Diego (DLS) to represent parents pursuant to the contract entered into between DLS and the Judicial Council of California. The alternate public defender is not available for juvenile dependency court appointments.

(Adopted 1/1/2002; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2010; Rev. 1/1/2012; Rev. 1/1/2016; Rev. 1/1/2017)

HUMBOLDT COUNTY SUPERIOR COURT

LOCAL COURT RULES

Effective January 1, 2019

LOCAL RULES FOR
THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF HUMBOLDT

determine if release to counsel's client is appropriate or, in the alternative, whether a discussion summarizing the evaluation would be in the party's best interest.

(Eff. 07/01/2002; as amended eff. 07/01/2004; as amended eff. 01/01/2018)

7.20 Requirements and Procedures for Motions other than Motions to Continue

(a) Moving party must serve the notice of motion and motion, points and authorities, and all supporting documents upon all other counsel in the case at least ten (10) calendar days before the date of the hearing if personally served, or fifteen (15) calendar days before the hearing if served by mail. Service in court boxes by noon shall be considered personal service.

(b) If opposing counsel plans to file points and authorities or any other documents in opposition to the motion, the documents must be filed with the Clerk's Office and served no later than five (5) court days before the date set for hearing. Failure to file an objection shall result in the motion being determined without a hearing.

(c) All reply papers must be filed and personally served no later than two court days before the hearing.

(d) The notice of motion must include, under the title of the motion, the date and time of hearing, and the courtroom in which the motion shall be heard.

(e) The motion shall be submitted on the pleadings unless the Court, for good cause shown, or on its own motion, grants an argument or an evidentiary hearing.

(f) No noticed motion shall be accepted by the Clerk's Office unless it is accompanied by a proof of service.

(Eff. 07/01/2002; as amended eff. 07/01/2004; as amended eff. 07/01/2017; as amended eff. 01/01/2018)

7.21 Ex Parte Applications and Orders

(a) Ex parte orders are rendered without giving the opposing party an opportunity to be heard. Before submitting ex parte orders to a judge or commissioner for approval, the applicant must give notice to all counsel, social workers, and parents who are not represented by counsel or explain the reason notice has not been given.

(b) The party requesting ex parte orders must inform the judge or commissioner that notice has been given by completing a declaration of that fact. The original Declaration and accompanying Application for Order must be submitted to the courtroom clerk in the juvenile department where the pending action would normally be heard.

(c) Upon receipt of the application and declaration of notice, the courtroom clerk will note the date and time received in the upper right corner of the declaration. In order to give opposing

parties ample time to respond to the ex parte application, the courtroom clerk will hold the application for twenty-four (24) hours prior to submission to the judicial officer for their decision.

(d) An opposing party must present any written opposition to a request for ex parte orders to the courtroom clerk within twenty-four (24) hours of receipt of notice. The Court may render its decision on the ex parte application or set the matter for hearing. The applicant is responsible for serving all noticed parties with copies of the Court's decision or notice that the Court has calendared the matter, and the applicant shall notify all parties of any hearing date and time set by the Court.

(e) Whenever possible, courtesy copies of the moving and responding papers and declarations re notice shall be served on the attorney for each parent, attorney for the child, county counsel, supervising social worker, de-facto parent, tribe, and parents who are not represented by counsel.

(f) Notice may be excused if the giving of such notice would frustrate the purpose of the order or cause the child to suffer immediate and irreparable injury.

(g) Notice may also be excused if, following a good faith attempt, the giving of notice is not possible, or if the opposing parties do not object to the requested ex parte orders.

(Eff. 07/01/2002; as amended 07/01/2004; as amended eff. 01/01/2018)

7.22 Petitions for Modification of Orders: More Restrictive Placement (Dependency)

Any motion by petitioner to modify an existing order to a more restrictive placement shall be implemented pursuant to Welfare and Institutions §387 and California Rules of Court, Rules 5.560(c) and 5.565.

(Eff. 07/01/2002; as amended eff. 07/01/2004; as amended eff. 01/01/2018)

7.23 Petitions for Modification of Orders: Less Restrictive Placement (Dependency)

Any motion by an interested party to modify the Court's orders to a less restrictive placement shall follow the procedures outlined in Welfare and Institutions Code §388 and California Rules of Court, Rules 5.560 and 5.570.

(Eff. 07/01/2002; as amended eff. 07/01/2004; as amended eff. 01/01/2018)

7.24 Petitions for Modification of Orders: Decrease in Visitation by Parent/Party (Dependency)

Any significant decrease from the Court-ordered level of a parent's/party's level of visitation shall be presented to the affected parent/party for comment before being submitted to the Court. The

FILED

JAN 31 2013

SUPERIOR COURT OF CALIFORNIA
COUNTY OF HUMBOLDT

IN THE SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF HUMBOLDT

In the Matter of:

ACCESS TO JUVENILE CASE FILES BY INDIAN TRIBES IN HUMBOLDT COUNTY

STANDING PROTECTIVE ORDER

This Standing Protective Order is to facilitate the exchange of information between federally-recognized Indian tribes in Humboldt County and the Humboldt County Department of Health and Human Services-Child Welfare Services in potential and active dependency matters involving an "Indian child" as defined by the Indian Child Welfare Act (ICWA) at 25 U.S.C. § 1904. Collaboration between local tribes and Child Welfare Services will be in the best interest of Indian children, families, and tribes as set forth in the ICWA and Welfare and Institutions Code (WIC) §§ 202 and 224. The Court also recognizes that such collaboration will facilitate "active efforts" to provide remedial/rehabilitative services as required by 25 U.S.C. §1912(d) and WIC § 361.7(a), and further that WIC § 361.7(b) requires, *inter alia*, that "active efforts" include making use of all available resources of an Indian child's tribe and tribal agencies.

The Humboldt County Department of Human Services/Tribal Protocol for Collaboration is attached to this Standing Protective Order as Exhibit A and is hereby incorporated into this Order by reference.

GOOD CAUSE APPEARING, IT IS HEREBY ORDERED PURSUANT TO WIC § 827:

In potential and active dependency cases, the Humboldt County Department of Health and Human Services-Child Welfare Services may exchange information with the tribal governments of federally-recognized Indian tribes in Humboldt County (as well as their duly authorized representatives) regarding Indian children associated with their tribe.

IT IS FURTHER ORDERED THAT:

In potential and active dependency cases, the tribal governments of federally-recognized Indian tribes in Humboldt County (as well as their duly authorized representatives) may inspect and make copies of the juvenile case files of the Humboldt County Department of Health and Human Services-Child Welfare Services involving Indian Children associated with their tribe.

A copy of this Standing Protective Order has the same force and effect in all respects as the original Standing Protective Order.

This order shall be in effect until January 31, 2014, and shall be subject to renewal on an annual basis.

01/31/2013
Date

John D. Feeney
Presiding Judge of the Juvenile Court

Exhibit A

Purpose

WHEREAS, the Indian Child Welfare Act (ICWA) was passed by the United States Congress in recognition of the fact that "there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children" (25 U.S.C. §1901(3)); and

WHEREAS, the main purposes of the ICWA are "to protect the best interests of Indian children" and "to promote the stability and security of Indian tribes and families" (25 U.S.C. §1902); and

WHEREAS, the Humboldt County Department of Health and Human Services fully endorses the spirit and implementation of the ICWA; and

WHEREAS, Congress enacted the ICWA because it determined that "the States . . . have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families" (25 U.S.C. §1901(5)); and

WHEREAS, California Senate Bill 678, effective January 1, 2007, codified many requirements of the ICWA into the Welfare and Institutions Code, the Family Code, and the Probate Code that govern Indian Child Custody Proceedings in California (Stats 2006 ch. 838, §§1-55); and

THEREFORE, in recognition and support of the purposes of ICWA, the Humboldt County Department of Health and Human Services (DHHS) is committed to partnering with Tribes to prevent the breakup of Indian families. DHHS and Tribes will work together in a coordinated and collaborative manner to better serve Indian children and families in our community by enhancing families' capacities to provide for their children's needs and improve their overall well-being.

To better meet the needs of Indian children, this protocol provides for information sharing regarding reports of suspected child abuse and/or neglect. DHHS, Child Welfare Services (CWS) collaborates with local tribes by providing case/referral file information in the manner prescribed by law and by the terms of the Standing Protective Order first signed by the Presiding Judge of the Juvenile Court of Humboldt County on June 7, 2012.

Recognizing: (1) that Tribes and CWS are concurrently investigating suspected child abuse, and (2) that collaboration between local tribes and CWS is in the best interest of Indian children, families, and Tribes as set forth in sections 202 and 224 of the California Welfare and Institutions Code, and SB 678, CWS will follow a standardized procedure for sharing information and collaborating with tribal representatives.

Definitions

- **Case/Referral File Information** – Any public agency document pertaining to a child who is or was the subject of an investigation, or any information, records, reports by social workers, CASA or probation, documents filed in a juvenile court, case photographs, transcripts tapes or electronic data obtained during the course of any investigation.

- **Confidentiality Contact Person (CCP)** - CWS staff person (or designee) who receives and responds to records requests. The CWS staff person will review the request and applicable law, prepare the records for review, and arrange for the review of records and/or preparation of copies.

- **Eligible Federally Recognized Tribe** -- Federally recognized Indian Tribe that is located within Humboldt County.

Procedure

To determine whether the Standing Order applies:

1. The CWS screener asks the reporting party whether there is reason to believe the child may be Native American and if so, with which Tribe(s) they may be affiliated. CWS screener will ask for parent and grandparent names.

2. If the reporting party believes the child is affiliated with a Tribe, the screener identifies whether the Tribe is one of the Federally Recognized Tribes located in Humboldt County.

    A. If the Tribe is located in Humboldt County, designate the case for Tribal Information Sharing.

    B. Contact the Tribe to verify enrollment/enrollment eligibility prior to referring the family to the Tribe.

3. If the reporting party believes that the child is affiliated with a tribe located within Humboldt County, but cannot name a tribe,

    A. Check Department records for information whether the child is affiliated with a local tribe.

    B. If there are records that establish that the child may be enrolled in/or eligible for enrollment in a local tribe, designate the case for Tribal Information Sharing.

SERVICE PROVISION

Social workers who are interacting with the family should collaborate with the child's Tribe(s). CWS must share information with County Tribes.

1. If the Child has an affiliation with a local tribe(s), share information relevant to the prevention, assessment or treatment of child abuse/neglect with the child's tribe(s).

2. The Tribe will make every effort to determine whether the child is eligible for membership at the earliest possible time, and will destroy CWS records if the child is not eligible.

3. CWS will share information with each tribe with which the child is affiliated until a Tribe makes a determination of membership.

4. The information may be shared telephonically, in writing, or in-person.

5. Once membership is determined, CWS must obtain a Release of Information (ROI) to share information with any Tribe of which the child is not a member or eligible for membership.

6. Information Contents:

   Information shared with tribal social workers may include, if already known:
   - Names of household members
   - Names of child's extended family/ancestry, as known
   - Tribal membership or eligibility for Tribal membership
   - Ages of family members
   - Address and phone number of family
   - Name and location of child(ren)'s/youths' school(s)
   - Name and phone number of the CWS social worker making the report
   - CWS referral number
   - CWS referral/case history
   - Service providers currently working with family
   - Date of referral
   - Redacted Screener Narrative
   - Family's primary language
   - Any known potential safety concerns regarding the home (i.e., unchained dogs)
   - CWS workers will **verbally** share all relevant criminal history
   - CWS workers may **verbally** share summaries of contents of police reports with tribal social workers.

NOTIFICATION EFFORTS

CWS will comply with Division 31 response mandates. Tribal social workers will make every effort to contact CWS social workers within the time mandated by Division 31.

- **Reports that do not meet criteria for in-person CWS response**

1. If the child is affiliated with a Tribe the report will be shared by the screener with the appropriate Tribe(s) within one business day of the report. The notice to the Tribe should include the available information listed above.

2. The Tribe will report back to CWS with additional information, if known, within one business day. Tribal concerns will be included in the screener narrative.

- **Reports that are assigned for an Immediate, 3-Day or 5-Day CWS response:**

1. To initiate collaboration, the CWS assigned social worker or other designated CWS staff will notify the Tribe within one business day of being assigned the referral in the mode specified by each Tribe.

2. If the assigned social worker does not receive a response from the Tribal Social Services representative within one business day, the assigned social worker will continue to make efforts to contact the Tribal Social Services representative throughout the investigation and will document those efforts in CWS/CMS.

- **Reports requiring a 10-day response by a CWS social worker**

1. Within one business day of the assigned social worker receiving the investigation, the assigned Social Worker will make a report to a Tribal Social Services representative in the mode specified by each Tribe.

2. The assigned social worker will collaborate with the Tribal social worker during the investigation process to determine interventions and services available through the Tribe, agency, and community to promote family preservation.

COLLABORATIVE PROCESS

CWS and Tribal Social Services will work with the family within each agency's scope of services and in accordance with any negotiated protocols.

Requests to Inspect/Receive Copies of Confidential Case Information

When the Tribe wishes to have access to information that is not part of an ongoing investigation, the Tribe may request to inspect or obtain copies of information in CWS files.

Upon receipt of a request for inspection or copies of CWS files, CWS shall determine if there are any documents or information contained in the record that the requesting party is not entitled to inspect.

- CWS will remove from the record any documents that the requesting Tribe is not entitled to inspect before the record is presented to the Tribal representative. CWS will redact any information that the Tribe is not entitled to inspect.
- After all documents and information contained in documents that the requesting Tribe is not entitled to inspect have been removed or redacted from the record, the requesting party may inspect the record. CWS may determine time, place and manner of inspection of confidential juvenile records.

If a Tribe requests copies of CWS file information, CWS shall inform the requesting party that he/she cannot disseminate the information being disclosed.

Tracking

- CWS shall maintain a log of information requests.

Superior Court of California
County of Imperial

Local Rules

Adopted, Effective January 1, 2020

The following Rules of Court for the Superior Court, County of Imperial are adopted January 1, 2020, and replace all rules previously adopted by the Superior Court, County of Imperial.

CHILD'S NAME:	CASE NUMBER:

ATTACHMENT 8c(1)-Indian Child Inquiry

1. Name of child:
   a. Person(s) questioned:

Name:	Name:
Relationship to child:	Relationship to child:
Address:	Address:
City, state, zip:	City, state, zip:
Telephone:	Telephone:
Date(s) questioned:	Date(s) questioned:

Name:	Name:
Relationship to child:	Relationship to child:
Address:	Address:
City, state, zip:	City, state, zip:
Telephone:	Telephone:
Date(s) questioned:	Date(s) questioned:

Name:	Name:
Relationship to child:	Relationship to child:
Address:	Address:
City, state, zip:	City, state, zip:
Telephone:	Telephone:
Date(s) questioned:	Date(s) questioned:

Name:	Name:
Relationship to child:	Relationship to child:
Address:	Address:
City, state, zip:	City, state, zip:
Telephone:	Telephone:
Date(s) questioned:	Date(s) questioned:

LOCAL RULES OF COURT

SUPERIOR COURT OF CALIFORNIA, COUNTY OF INYO

Effective: July 1, 2010

Superior Court of California, County of Inyo
Post Office Drawer U
Independence, California 93526
Tel: (760) 872-3038

Rev. 07-01-2010

approved by the Court. Counsel and parties may make a *CourtCall* appearance by serving and filing with *CourtCall*, not less than five (5) court days prior to the hearing date, a Request for Telephonic Appearance Form and paying the requisite fee and/or providing Fee Waiver Orders for each *CourtCall* appearance. Additional information can be obtained by calling the *CourtCall* program Administrator at 888-882-6878. (Adopted, effective July 1, 2010)

RULE 2.14 INDIAN CHILD WELFARE ACT (ICWA) EXPERTS IDENTIFICATION AND ACCESS TO RECORDS

(a) The provisions of this rule shall apply in all cases involving an Indian child, including dependency, delinquency, family law, and guardianship proceedings, wherein the testimony of a qualified expert is required to comply with the provisions of 25 U.S.C. § 1901 et seq.; California Rules of Court, rules 5.480 through 5.487; Welfare and Institutions Code §§ 110, 224-224.6, 290.1, 290.2, 291-295, 297, 305.5, 306.6, 317, 360.6, 361, 361.31, 361.7, 366, 366.26, 727.4, 10553.1, and 16507.4; and/or other applicable provision of law or rule of court.

(b) Subject to the provisions of subdivision (c) of this rule, an "ICWA expert" as defined in subdivision (a), shall have the right to examine and review, in preparation for testifying, the juvenile case file of the Indian child or children about whom the expert will testify. The ICWA Expert shall otherwise strictly maintain the confidentiality of the information contained in the juvenile case file.

(c) Prior to the disclosure, examination, or review of the juvenile case file, any party intending to call an ICWA Expert, shall give notice to the Court and all parties to the action of the identity of the ICWA Expert, and shall provide a resume or other reasonable statement setting forth the ICWA Expert's qualifications. Within ten (10) days of receipt of said notice, the Court on its own motion, or any party may notice a hearing to determine whether the intended ICWA Expert is a "qualified expert," and/or to seek orders limiting the ICWA Expert's access to confidential information. If such a motion is timely filed, no confidential information shall be disclosed to the ICWA Expert, nor shall the ICWA Expert have access to, review, or examine the juvenile case file pending further order of the court. If no such motion is filed within ten (10) days of receipt of the notice and statement of qualification by the court and all parties, the ICWA Expert may review and examine the juvenile case as provided in subdivision (b) of this rule. (Adopted, effective July 1, 2010)

Superior Court of California
County of Mendocino

Local Rules
Effective January 1, 2020

The following rules of court for the Superior Court of California, County of Mendocino, are adopted pursuant to Government Code 68070 and Code of Civil Procedure §§ 128 and 187 effective January 1, 2020, and replace all rules previously adopted by the Superior Court of California, County of Mendocino.

child's family are informal and juvenile court proceedings are not instituted. *(T.N.G. vs. Superior Court* (1971) 4C.3d 767, 780-781*)*

b. Except as provided in subsection (c) all requests for inspection and disclosure of juvenile records will be governed by the procedures set forth in W&I § 827, California Rules of Court rule 5.552, and local rule 5.8.

c. Notwithstanding the policy that juvenile records should remain confidential, the law recognizes that it is in the best interest of children that exceptions to confidentiality be made so that persons investigating or working with children and their families may obtain complete, prompt and accurate information concerning the child and the family *(See, e.g.,* W&I § 827(a)(1)(J), (K)*)*

The court hereby finds that a limited and informal disclosure of juvenile records by Probation and Family & Children's Services to the agencies, individuals and organizations listed below on a "need to know" basis will benefit children and their families by avoiding duplication of investigative efforts, and by allowing the agencies, individuals and organizations who work with, treat, or make recommendations regarding children and their families to promptly access relevant information. This process will benefit the court by ensuring that agencies, individuals, and organizations who work with children and families have prompt access to all information which may be relevant in determining what is in a child's best interest. The public interest in achieving these goals outweighs the confidentiality interests reflected in W&I §§ 827 and 10850, *et. seq.*, and establishes good cause for this rule.

1. Family & Children's Services and Probation may provide verbal information regarding, allow inspection of, or provide copies of, relevant juvenile records to the following agencies, persons and organizations on an "as needed" basis:

    a. Probation;

    b. Family & Children's Services;

    c. Facilitators of Family & Children's Services parenting programs, including but not limited to, the Intake Support Group and the Family Empowerment Group;

    d. Mendocino County Behavioral Health & Recovery Services, or any private psychologist, psychiatrist, or mental health professional ordered by the Juvenile Court to examine or treat any child who falls within the jurisdiction of the juvenile court, and his or her parent or guardian;

    e. Foster Family Agencies;

    f. Any hospital where a child is an inpatient for psychiatric reasons, for the purpose of treatment or discharge planning;

    g. Redwood Coast Regional Center;

h. Any sexual abuse treatment program or victims' group to which a child or his or her parent or guardian is referred for treatment by the Juvenile Court;

i. Any substance abuse treatment provider, including but not limited to the Mendocino County Alcohol and Other Drugs Program (AODP), to which a child or his or her parent or guardian is referred to for treatment by the Juvenile Court;

j. Victim/Witness coordinators for the State of California Victims of Crime Programs;

k. Any domestic violence and/or anger management treatment program to which a child or his or her parent or guardian is referred to for treatment by the Juvenile Court;

l. The designated trial representative or the Indian Child Welfare Worker for any federally recognized Native American Indian tribes located in Mendocino County;

m. A judge or commissioner assigned to a family law case with issues concerning custody or visitation;

n. The family court mediator or court-appointed evaluator conducting an assessment or evaluation of child custody, visitation or guardianship for the family or Juvenile Court;

o. The Mendocino County Victim Offender Reconciliation Program (VORP).

2. Any disclosure or exchange of information authorized by subsection (c) of this rule will be subject to the following conditions:

a. A request for information exchange of juvenile records must be submitted on Declaration: Information Exchange of Juvenile Records (MJV-102-local) pursuant to (W&I § 827; California Rules of Court rule 5.552).

b. Probation and Family & Children's Services must first establish to the agency's satisfaction that the party requesting the juvenile records is in fact a member of an agency or organization, described in subsection (c) of this rule, or is an individual authorized to receive the information;

c. Information identifying the reporting party or source of referral must be redacted prior to disclosure of juvenile records, and must remain confidential as required by law (Penal Code §§ 11167, 11167.5);

d. If an agency, person or organization which has received juvenile records pursuant to this rule desires to disclose the information to a third party, it must make a written application to the juvenile court for permission to disclose such information pursuant to W&I § 827 and California Rules of Court rule 5.552;

e. Juvenile records obtained pursuant to this rule will be used exclusively in the investigation and/or treatment conducted the agency, organization or person described in subsection (c), and in any juvenile or family court proceedings following the investigation or treatment;

f. Nothing in this rule is intended to limit any disclosure of information by an agency which is otherwise required or permitted by law.

3. If Probation or Family & Children's Services receives a request for disclosure of juvenile records which it deems to fall outside the scope of informal disclosure authorized by this rule, the agency must deny the request and refer the requesting party to the provisions of W&I § 827, California Rules of Court rule 5.552, and local rule 5.8.

(Effective 1/1/99; renamed & amended 7/1/05; amended 1/1/07; renumbered 1/1/10; amended 7/1/18; renumbered & amended 1/1/19)

5.9 Release of Juvenile Records by Family & Children's Services/Mendocino County Health & Human Services Agency

W&I § 827 limits the inspection and copying of any documents or records contained in the child welfare agency case file to certain authorized individuals unless otherwise ordered by the court. W&I § 830 permits members of a multidisciplinary personnel team engaged in the prevention, identification, management, or treatment of child abuse or neglect to disclose and exchange information and writings to an with one another relating to any incidents of child abuse that may also be part of a juvenile court record or otherwise designated as confidential under state law if the member of the team having that information or writing reasonable believes it is generally relevant to the prevention, identification, management, or treatment of child abuse, or the provision of child welfare services.

Family & Children's Services is contracted with providers listed below in subsection (a) who are engaged in the prevention, identification, management, and treatment of child abuse or neglect and who participate in a multidisciplinary teams which discuss and receive referrals. Family & Children's Services has also contracted with a professional agency for the purpose of providing feedback, coaching, education, and further training to Family & Children's Services in order to enhance the quality of social worker child forensic interviews which requires the review of the records listed in subsection (c) to facilitate the coaching and training of social workers in forensic interviewing.

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appointment may be continued in the family law proceedings, in which case the juvenile court orders will set forth the nature, extent and duration of the advocate's duties in the family law proceeding.

(l) Right to Appear: An advocate will have the right to be heard at all court hearings, and will not be subject to exclusion by virtue of the fact that the advocate may be called to testify at some point in the proceedings. The court, in its discretion, has the authority to grant the advocate amicus curiae status, which includes the right to appear with counsel.

(m) Distribution of CASA Reports: The advocate must submit his or her report to the court at least 5 court days prior to the hearing. The advocate must serve a copy of the report on the parties to the case at least 2 court days prior to the hearing. For purposes of this rule, the parties to the case include (as applicable): county counsel; attending case social worker; child's attorney; parents' attorney(s); child (via foster family agency); Indian Child Welfare Act representative; and de facto parents.

(Eff. 7/1/08) (Rev. 7/1/18)

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SISKIYOU

LOCAL RULES OF COURT
EFFECTIVE JANUARY 1, 2020

Revised 1/1/20

CASA must immediately serve upon that same attorney, by postage-prepaid first-class mail, a document entitled "Notice of Filing CASA Report" which states the caption of the cause and its case number, and further states that the Report has been placed in said pickup box. This Notice will be required only if the Report so delivered is filed with the Court.

(4) Limitations On The Privilege. The service privilege described by Local Rule 16.04.D(2) extends to service of CASA Reports only.

E. Service Of W&IC Section 388 Petitions

If a CASA advocate files a petition pursuant to Welfare & Institutions Code §388, such petition must be served according to the provisions of Code of Civil Procedure §§1011, 1012, or 1013.

F. Proof Of Service Of CASA Documents

A proof of service indicating the method of service must accompany any document filed by a CASA advocate in Juvenile Court proceedings, including CASA Reports.

G. Calendar Priority For CASA Matters

Because CASA advocates are providing volunteer services for the benefit of the Court as well as for the children for whom they advocate, proceedings at which the CASA advocate appears will be granted priority on the Court's calendar whenever it is feasible to do so. *[Rule 16.04 adopted effective July 1, 1996; amended and renumbered effective July 1, 2008; amended effective January 1, 2019.]*

16.05 Dependency Mediation

A. Designation Of Dependency Mediation Program

This Court has established a mediation program for dependency matters. The dependency mediation program operates under the protocol established by the Siskiyou County Unified Courts Dependency Mediation Guidelines. The mediation program is administered by the Director of Siskiyou County Family Court Services, located at 311 Fourth Street, Yreka, CA 96097.

B. Mediation Services Provided

Services provided by the Court's mediation program include mediation, as well as independent meetings when appropriate.

(1) Mediator's Review. The Mediator is authorized to review the documents in the Court's file prior to any mediation session. (The Mediator will not draw conclusions of fact during the review process.)

(2) Pre-Mediation Session. The Mediator may first meet with agency and party representatives, to begin fact-finding and issue development. These representatives might include attorneys for the parents and children; employees of Adult and Children's Services; Court Appointed Special Advocates; and when appropriate, the child welfare representative for a Native American tribe.

(3) Mediation; And Independent Meetings. The Mediator may conduct mediation sessions with the parents and other interested persons who are involved in the case. When appropriate, the Mediator may meet with individual family members, interested persons, and agency representatives; any such independent meetings will be conducted in a manner that promotes neutrality.

(4) Mediation Agreement. When appropriate, the terms and conditions of a mediation agreement may be reflected in a memo from the Mediator, or may be reduced to a writing signed by appropriate parties to the agreement and their respective counsel. Only written and fully approved mediated agreements may be presented to the Court for its approval and issuance of orders in compliance with the terms and conditions of the agreement.

(5) No Agreement. If no agreement is reached in mediation, the Mediator may file a memo with the Court indicating failure of the parties to reach an agreement; the memo will include any additional information that the parties have agreed can be made known to the Court. If no agreement has been reached, the Mediator will not make any recommendations to the Court.

C. Referrals To Mediation

(1) Referrals In General. Referrals to mediation may take place after the filing of a petition pursuant to Welfare & Institutions Code §301, and/or in any other proceeding pursuant to W&IC §301, and/or in any other dependency matter that might benefit from mediation. Referrals to mediation will be made primarily by the Judge of the Juvenile Court.

Cases will be referred to mediation along the continuum of the dependency court process, and will remain subject to mediation throughout that process. Cases generally will not be referred to mediation prior to the jurisdiction hearing.

The determining factor for referral of a dependency matter to mediation is not the current status of the case, but whether or not the unresolved issues of the case would benefit from mediation.

(2) Party-Initiated Referrals**.** Any party to a dependency action may circulate a "Request for Mediation" form to the interested parties, and arrange a mutually agreeable date to mediate any issue in the proceeding. The requesting party must notify the Mediator of the requested date and time.

The party who requests the mediation will be responsible for notifying the participants of the date and time assigned by the Mediator. (The Mediator will not be responsible for providing notice of date and time to any of the anticipated participants.)

If an agreement is reached during a party-initiated mediation process, and the agreement creates a change in the relevant circumstances of the case, then the requesting party may file a W&IC §388 petition for the purpose of reporting the agreement to the Court.

(3) Additional Participants. Any party who intends to invite additional participants to the mediation (e.g., family members or support persons) must so inform the Mediator no less than twenty-four (24) hours prior to the mediation.

D. Confidentiality

All dependency mediations are strictly confidential. Participants are precluded from making reference, outside of a mediation session, to matters discussed during the course of mediation. All participants in mediation will be required to sign a confidentiality agreement prior to participation.

It is the responsibility of agencies, tribes, and attorneys to advise their representatives, clients, and any other participants in mediation of the confidentiality requirement. [Fam.Code §3177; Ev.Code §§ 1115, 1119.]

E. Special Circumstances

(1) Children In Mediation. Children may be involved in the mediation process if the parties to the mediation believe that the children and/or the process would benefit from that participation. Final discretion as to the children's participation lies with the Mediator and the attorney for the children. The children may be involved in the process as part of an independent meeting with the mediator and the children's attorney.

(2) Parents In Custody. Incarcerated parents may attend mediation at the discretion of the Judicial Officer. If the incarcerated parent is not permitted or able to attend the mediation, he/she may contribute his/her comments by submitting an "Issues Form" to the Mediator's office prior to the mediation.

(3) Parties As Victims Of Abuse. When a party to mediation is an alleged victim of abuse or violence perpetrated by any other participant, the alleged perpetrator may be excluded from the mediation process. Any request for exclusion on the basis of abuse or violence must be made to the Court at the time the matter is referred to mediation, by the alleged victim or that party's attorney.

The Mediator may meet independently with an alleged perpetrator, depending on the individual circumstances of the case.

A victim of abuse or violence is entitled to attend the mediation sessions accompanied by a support person. The support person may provide moral support, but must not interfere with the mediation process. *[Rule 16.05 adopted effective July 1, 2000; amended and renumbered effective July 1, 2008.]*

16.06 Reserved

[Rule 16.06, "Authorization for Use of Psychotropic Drugs", was deleted effective 7-1-02.]

16.07 Confidentiality

All persons interested in dependency proceedings are hereby notified of the provisions of Welfare & Institutions Code §827, et seq., and of Rule 5.552 of the California Rules of Court, which restrict access to information relating to dependency proceedings. The Court may, from time to time, enact or issue an order to specify local rules and procedures related to access to, and dissemination of, confidential juvenile information. *[Rule 16.07 adopted effective January 1, 2007.]*

CHAPTER 17: JUVENILE DELINQUENCY RULES

17.01 General Applicability Of The Siskiyou County Local Rules Of Court To Juvenile Delinquency Proceedings

Except to the extent that there may be a conflict with this Chapter 17, the Local Rules pertaining to civil, family law, probate and criminal actions are incorporated herein by this reference as though fully set forth at length, and are hereby made applicable to all juvenile delinquency proceedings. *[Rule 17.01 adopted effective July 1, 2002]*

17.02 Calendar Matters

A. Delinquency Master Calendar

The Court maintains a weekly master calendar for delinquency proceedings; however, cases assigned to that calendar may be subject to calendar changes. Interested persons can confirm the date and time of a calendared delinquency matter by calling the Court's Calendar Coordinator or the Civil/Juvenile Division.

B. Detention Hearings in Delinquency Proceedings

In general, detention matters in delinquency cases will be set for hearing at 1:15 PM daily, except on the master calendar day when they will be set at 2:00 P.M.

If a delinquency detention matter must be heard at any time other than as set forth in this Rule 17.02.B, the detaining agency must give notice to the Court's Calendar Coordinator by no later than 3:00 PM on the court day before the proposed hearing, so that the Coordinator can reserve a bench officer, a reporter, and security personnel.

It is the responsibility of the detaining agency to give timely notice of the date and time of the detention hearing to the Supervising Clerk of the Civil/Juvenile Division, as well as to all parties and all counsel who may have been appointed. *[Rule 17.01 adopted effective July 1, 2002, amended and renumbered effective July 1, 2010; amended effective January 1, 2019.]*

Inyo County Superior Court
168 North Edwards Street
Post Office Drawer U
Independence, California 93526
Tel: (760) 878-0217

SUPERIOR COURT OF CALIFORNIA

COUNTY OF INYO

JUVENILE COURT

In Re the Matter of Toiyabe Family Services' Direct and Legitimate Interest in Juvenile Delinquency Proceedings Involving Designated Native American Youth.	STANDING ORDER NO. Order Presuming Toiyabe Family Services' Direct and Legitimate Interest in Juvenile Delinquency Proceedings Involving Designated Native American Youth (WIC § 676(a))

This Standing Order is intended to enhance the Court's decision making in juvenile delinquency proceedings, including, but not limited to, detention hearings, dispositional hearings, and post-dispositional review hearings, which involve Native American minor children who are eligible to receive services from Toiyabe Family Services in Bishop, Inyo County, California. The Court recognizes that even though the provisions of the Indian Child Welfare Act (ICWA) may not be applicable in any particular case or hearing, the Court, Juvenile Probation, and the Minor can nevertheless benefit from the participation of Toiyabe Family Services in the Minor's delinquency proceedings.

Such benefits may include, but are not necessarily limited to, assessing the Minor's need for and providing substance abuse, mental health, and/or other treatment services to the Minor and/or his/her family; informing the court about placement options for the Minor within the Minor's extended family or the tribal community; assist the Probation Department and Court in identifying strengths and needs of the Minor and his/her family; assist in identifying and accessing tribal and cultural activities and programs for the benefit of the Minor and his/her family; as well as assisting in the development and implementation of a case plan and/or Independent Living Program/Plan for the Minor.

GOOD CAUSE APPEARING THEREFOR, IT IS HEREBY ORDERED AS FOLLOWS:

In the case of any Native American Minor appearing before the above-entitled Court, in connection with juvenile delinquency proceedings under Section 602 of the California Welfare and Institutions Code, and said Minor is eligible to receive services from Toiyabe Family Services of the Bishop Paiute Tribe's Toiyabe Indian Health Project, a duly authorized representative of Toiyabe Family Services shall, within the meaning of Welfare & Institutions Code Section 676(a), be presumed to have a direct and legitimate interest in the case of said Minor.

Said representative of Toiyabe Family Services shall be allowed to attend Juvenile Court proceedings pertaining to such a Minor, subject to the judicial officer presiding over the case or particular hearing determining that Toiyabe Family Services

does not have a direct and legitimate interest in the particular case, or that good cause otherwise exists to exclude said representative from a particular hearing(s), or portion thereof.

In addition to being present at the hearing, said representative may do all of the following upon consent of the court:

1. Address the court.
2. Request and receive notice of hearings.
3. Request to examine court documents relating to the proceeding.
4. Present information to the court that is relevant to the proceeding.
5. Submit written reports and recommendations to the court.
6. Perform other duties and responsibilities as requested or approved by the court.

This Standing Order shall also apply to proceedings involving Native American minors, as described above, who have been designated by the Court as a "dual status" minor. (WIC § 241.1)

This Standing Order applies even though the above-described minor has not been determined to be "at risk of removal," and/or the provisions of the Indian Child Welfare Act (ICWA)[1], including the provisions of California Welfare & Institutions Code § 224 *et seq.*, and *California Rules of Court*, Rule 5.480 *et seq.*) do not otherwise apply to the Minor's delinquency hearing or case. Any notice given to Toiyabe Family Services under this

[1] 25 U.S.C. § 1901 *et seq.*

Order shall not constitute any express or implied finding that the minor is "at risk of removal" under the aforementioned ICWA provisions, or otherwise implicating said provisions. Further, should the aforementioned provisions of ICWA apply to a particular minor, any notice provided to Toiyabe Family Services hereunder, does not constitute legal notice to the Tribe as required by the aforementioned provisions of the ICWA.

So Ordered.

Dated:

Dean T. Stout
Presiding Judge/
Presiding Judge of the
Juvenile Court

Inyo County Superior Court
168 North Edwards Street
Post Office Drawer U
Independence, California 93526
Tel: (760) 878-0217

SUPERIOR COURT OF CALIFORNIA

COUNTY OF INYO

JUVENILE COURT

In Re the Matter of The Tribe's Presumed Direct and Legitimate Interest in Juvenile Delinquency Proceedings Involving Designated Native American Youth	STANDING ORDER NO. Order Presuming Tribe's Direct and Legitimate Interest in Juvenile Delinquency Proceedings Involving Designated Native American Youth (WIC § 676(a))

This Standing Order is intended to enhance the Court's decision making in juvenile delinquency proceedings, including, but not limited to, detention hearings, dispositional hearings, and post-dispositional review hearings, which involve a Native American unmarried minor child who is a member of one of the following federally recognized local tribes, or who is the biological child of a member of one of the following federally recognized local tribes, and the child is eligible for membership:

- Big Pine Paiute Tribe Of The Owens Valley
- Bishop Paiute Reservation

- Fort Independence Indian Reservation
- Lone Pine Paiute-Shoshone Reservation
- Timbisha Shoshone Tribe

The Court recognizes that even though the provisions of the Indian Child Welfare Act (ICWA) may not be applicable in any particular case or hearing, the Court, Juvenile Probation, and the Minor can nevertheless benefit from the participation of the Tribe in the Minor's delinquency proceedings. Such benefits may include, but are not necessarily limited to, assessing the Minor's need for and providing substance abuse, mental health, and/or other treatment services to the Minor and/or his/her family; informing the court about placement options for the Minor within the Minor's extended family or the tribal community; assist the Probation Department and Court in identifying strengths and needs of the Minor and his/her family; assist in identifying and accessing tribal and cultural activities and programs for the benefit of the Minor and his/her family; as well as assisting in the development and implementation of a case plan and/or Independent Living Program/Plan for the Minor.

GOOD CAUSE APPEARING THEREFOR, IT IS HEREBY ORDERED AS FOLLOWS:

In the case of any unmarried Native American minor appearing before the above-entitled Court in connection with any juvenile delinquency (WIC § 602) proceeding, and said minor is a member of one of the following federally recognized local tribes, or who is the biological child of a member of one of the following federally recognized local tribes, and the child is

eligible for membership: Big Pine Paiute Tribe Of The Owens Valley; Bishop Paiute Reservation; Fort Independence Indian Reservation; Lone Pine Paiute-Shoshone Reservation; or, the Timbisha Shoshone Tribe, the duly authorized Indian Child Welfare Act (ICWA) Representative for said Tribe shall, within the meaning of Welfare & Institutions Code Section 676(a), be presumed to have a direct and legitimate interest in the case of said Minor.

Said ICWA Representative shall be allowed to attend Juvenile Court proceedings pertaining to such a Minor, subject to the judicial officer presiding over the case or particular hearing determining that said Tribe and ICWA Representative does not have a direct and legitimate interest in the particular case, or that good cause otherwise exists to exclude said ICWA Representative from a particular hearing(s), or portion thereof.

In addition to being present at the hearing, said Representative may do all of the following upon consent of the court:

1. Address the court.
2. Request and receive notice of hearings.
3. Request to examine court documents relating to the proceeding.
4. Present information to the court that is relevant to the proceeding.
5. Submit written reports and recommendations to the court.
6. Perform other duties and responsibilities as requested or approved by the court.

This Standing Order shall also apply to proceedings involving Native American minors, as described above, who have been designated by the Court as a "dual status" minor. (WIC § 241.1)

This Standing Order applies even though the above-described minor has not been determined to be "at risk of removal," and/or the provisions of the Indian Child Welfare Act (ICWA)[1], including the provisions of California Welfare & Institutions Code § 224 *et seq.*, and *California Rules of Court*, Rule 5.480 *et seq.*) do not otherwise apply to the Minor's delinquency hearing or case. Any notice given to the Tribe under this Order shall not constitute any express or implied finding that the minor is "at risk of removal" under the aforementioned ICWA provisions, or otherwise implicating said provisions. Further, should the aforementioned provisions of ICWA apply to a particular minor, any notice provided to the Tribe hereunder, may not necessarily constitute legal notice to the Tribe as required by the aforementioned provisions of the ICWA.

Informal notice provided to the Tribe hereunder may be given by the Inyo County Probation Department to the Tribe's designated ICWA Representative by any reasonable means to insure timely notice of proceedings, which may include telephone, fax, and/or mailing of informal notice by use of Judicial Council form JV-625.

Dated:

_____
Dean T. Stout, Presiding Judge/
Presiding Judge of the Juvenile Court

[1] 25 U.S.C. § 1901 *et seq.*

TULARE COUNTY SUPERIOR COURT
LOCAL RULES

VISALIA
County Civic Center
221 South Mooney Boulevard
Visalia, CA 93291
559-730-5000

DINUBA
640 South Alta Avenue
Dinuba, CA 93618
559-595-6400

SOUTH COUNTY JUSTICE CENTER
300 East Olive Avenue
Porterville, CA 93274
559-782-3700

JUVENILE JUSTICE CENTER
11200 Avenue 368
Visalia, CA 93291
559-738-2300

Rule 1103 - Filing of Documents

No document except original petitions filed pursuant to Welfare and Institutions Code sections 300 and 602 will be accepted by the court clerk for filing unless it sets forth on its face the case caption and is accompanied by a proof of service reflecting service on all counsel of record and parties not represented by counsel. (01/01/07)

Rule 1104 - Motion Requirements

(a) No noticed motion will be accepted by the county clerk unless it is accompanied by a proof of service.

(b) All motions calendared in the juvenile court must comply with the requirements of the Code of Civil Procedure sections 1010 et seq. and California Rules of Court, rules 3.1110, 3.1113, 3.1115, 3.1320, and 5.544, except that written notice to opposing counsel and the court may be reduced to five court days, and any opposition must be filed and served two court days before the scheduled hearing. Prior to giving notice, the moving party must reserve the hearing date with the calendar clerk for the juvenile court.

Ex parte requests for relief from compliance with this rule may be granted only upon written application to the juvenile court judge or bench officer assigned to hear the matter, supported by affidavit showing good cause, and with at least four hours personal or telephonic notice of the time set for such ex parte application to all counsel appearing in the proceeding. Any request for such ex parte relief must also include an affidavit by requesting counsel that notice was given as required.

All documents must be typed or printed and must be punched with two holes at the top of each page.

Notwithstanding the foregoing requirements, motions to continue a hearing, brought under Welfare and Institutions Code section 352, are subject to the time limits set forth therein. Additionally, counsel for all parties to a proceeding may stipulate to a continuance, provided that such stipulations are submitted and approved by the court regularly hearing the matter at least two court days prior to the hearing. Such stipulations must establish the existence of good cause for continuance.

Papers that do not comply with these rules, the Code of Civil Procedure, and the California Rules of Court will not be considered by the court unless good cause is otherwise shown. (07/01/00)

Rule 1105 - Documenting Notice of Hearings

In all juvenile dependency matters, Child Welfare Services (CWS) must file a single “Proof of Service Declaration” to show compliance with the legal notice requirements for each hearing. Judicial Council forms must be used by the agency internally to meet notice and Title IV-E requirements. (Forms are available on the Internet at www.courts.ca.gov.) A “Proof of Service

Declaration" (see Appendix 2) must be signed, under penalty of perjury, indicating the following:

(a) That a notice of hearing (e.g., Judicial Council Form JV-280 or JV-300) has been sent to each of the parties, any court appointed special advocate (CASA), the attorneys, and any Indian tribe, informing them of the nature of the proceeding;

(b) The date, time, place, and manner in which notice was given;

(c) The parties, attorneys, CASAs (if any), and Indian tribes (if any) noticed, including addresses;

(d) Whether reports accompanied the notice;

(e) Names of parties who were not noticed due to unknown addresses.

The "Proof of Service Declaration" must include documentation of CWS's due diligence in attempting to locate missing parents whenever required by law. (07/01/00) (Revised 01/01/2020)

Rule 1106 - Ex Parte Orders in Dependency Cases

(a) Before submitting ex parte orders to a judicial officer for approval, the applicant must give notice to all counsel, social workers, and parents who are not represented by counsel or explain the reason notice has not been given.

(b) The party requesting ex parte orders must inform the judicial officer that notice has been given by completing a "Declaration Re Notice of Ex Parte Application" form (Appendix 11). The original declaration and accompanying "Application for Order" must be submitted to the juvenile court clerk of the juvenile division.

(c) Upon receipt of the application and declaration of notice, the clerk will note the date and time received in the upper right corner of the declaration. In order to give opposing parties ample time to respond to the ex parte application, the clerk will hold the application for four hours prior to submission to the judicial officer for their decision.

(d) An opposing party must present any written opposition to a request for ex parte orders to the court clerk of the juvenile division within four hours of receipt of notice. The court may render its decision on the ex parte application or set the matter for hearing. The applicant is responsible for serving all noticed parties with copies of the court's decision, or notice that the court has calendared the matter, and the applicant must notify all parties of any hearing date and time set by the court.

(e) Whenever possible, the moving and responding papers and declaration regarding notice must be served on the attorney for each parent, attorney for the child, county counsel, CASA, supervising social worker, and parents who are not represented by counsel.

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RULES OF THE SUPERIOR COURT OF CALIFORNIA COUNTY OF VENTURA

Revised Effective January 1, 2020

www.ventura.courts.ca.gov

Michael D. Planet, Executive Officer/Clerk
and Jury Commissioner
VENTURA SUPERIOR COURT
County of Ventura
800 S. Victoria Avenue, Ventura, California 93009
Telephone (805) 289-8900

At any time prior to dismissal if there are issues of custody and/or visitation and there is no issue of risk of harm to the minor(s), the court may require the parties to schedule and participate in a mediation with Family Court Services. Parents and minor(s) six (6) years or older must, absent a court order to the contrary, attend the mediation. Mediation shall be conducted in accordance with the laws, rules, standards, and procedures specified for Family Law custody and visitation issues, including, but not limited to, the provisions of *Family Code* §3160 et seq. *California Rules of Court*, rules 5.210 et seq. and Ventura County Superior Court Local Rule 5.30 et seq.

3. Discovery Protocol See *California Rules of Court*, rule 5.546.

B. MISCELLANEOUS RULES REGARDING DEPENDENCY CASES

1. COURT FILES

a. Each minor child who is subject to a dependency petition shall be assigned a separate file number and a separate court file shall be maintained for each child.

b. Each new court file created as a result of a petition filed under Welfare and Institutions Code §300, shall consist of two (2) separate physical folders, the main folder and the Confidential and the Indian Child Welfare Act ("ICWA") folder.

c. The confidential and ICWA folder shall be divided into two (2) separate sections, one section where confidential documents are to be filed, and one section where ICWA documents are to be filed.

d. The Confidential section shall contain documents that contain confidential information that should not be given to parents and/or children without a further court order, for example, proofs of service showing confidential foster care information, confidential caregiver information forms, and confidential de facto parent requests. The confidential section shall also contain any privileged information including psychological evaluation reports. The party filing a confidential document shall be responsible to clearly indicate it is a confidential document by stamping or writing in red ink on the front page "Confidential" unless otherwise required by law. No parent or dependent child, absent a court order shall have access to the confidential part of a dependency file.

e. The ICWA section shall contain all documents related to compliance with the Indian Child Welfare Act which shall be clearly identified by the party filing the document.

f. All documents not filed in the confidential and ICWA file shall be filed in the main folder of the file.

2. In order to protect the parties' privacy and to prevent the inadvertent disclosure of confidential psychological information, psychological evaluation reports shall not be attached to a court report but shall be separately filed in the confidential part of the court's file. A copy of the report shall be given to the attorneys for each party before the time of the hearing and the attorneys shall be responsible for the manner of disclosing the information to her or his client.

3. When submitting documents for filing, in cases involving multiple minors, parties shall submit one additional copy of the document for each additional minor named on any document submitted to the court for filing. The clerk will place the additional copies in each minor's file.

4. If any party proposes findings and orders, the proposed findings and orders shall be submitted to the court separate from any attachments or cover memoranda.

5. If the court orders a party to prepare findings and orders, the party shall serve a copy of the proposed findings and orders on all other parties prior to the time they are submitted to the court.

C. GENERAL COMPETENCY REQUIREMENT OF COUNSEL WHO APPEAR IN JUVENILE DEPENDENCY PROCEEDINGS

All public agency and court appointed attorneys who appear in juvenile dependency proceedings, including counsel that represent children, must meet the minimum standards of competence set forth in the California Rules of Court. Attorneys who are privately retained by parents shall provide information to the court as requested regarding her/his competency to represent clients in dependency cases.

D. PROCEDURES TO SCREEN, TRAIN, AND APPOINT ATTORNEYS REPRESENTING PARTIES

1. All public agency and court appointed attorneys who represent parties in juvenile dependency proceedings shall meet the minimum standards of training and/or experience set forth in these rules. Each public agency and court appointed attorney of record for a party to a dependency matter pending before the court shall complete and submit to the court a Certificate of Competency Form (VN012). Any public agency and court appointed attorney who appears in a dependency matter for the first time shall complete and submit a Certificate of Competency to the court within ten (10) days of his or her first appearance in a dependency matter.

2. Public agency and court appointed attorneys who meet the minimum standards of training and/or experience as set forth in these rules, as demonstrated by the information contained in the Certification of Competency submitted to the court, shall be deemed competent to practice before the juvenile court in dependency cases except as provided in subdivision 3 of this rule.

3. Upon submission of a Certification of Competency which demonstrates that the attorney has met the minimum standards for training and/or experience, the court may determine, based on conduct or performance of counsel before the court in a dependency case within the six (6) month period prior to the submission of the certification to the court, that a particular attorney does not meet minimum competency standards. In such cases, the court shall proceed as set forth in Rule D4 wherein an attorney fails to comply.

Local Rules of

Superior Court of California

County of Yolo

Effective January 1, 2007; As amended, eff 01/01/08; As amended, eff 01/01/09; As amended, eff 01/01/10; As amended, eff 07/01/10; As amended, eff 01/01/11; As amended, eff 01/01/12; As amended, eff 01/01/13; As amended, eff 01/01/15; As amended, eff 01/01/19

The following rules of court for the Superior Court of Yolo County are adopted January 1, 2019 and replace the rules previously adopted by the Superior Court of Yolo County.

RULE 26 GUARDIANSHIPS OF THE PERSON OF A MINOR

26.1 PETITION FOR APPOINTMENT: NOTICE AND HEARING

(a) Notice required by Probate Code Section 1511(b) shall be personally served while the notice required by Probate Code Section 1511 (c), (d) and (e) is to be mailed.

(b) Relatives in the second degree include: maternal grandparents, paternal grandparents, parents, brothers and sisters, and any children.

(c) Notice shall be given to persons not otherwise entitled to notice who are parties to any other proceeding to appoint a guardian for the minor if such proceedings are known to the petitioner at the time of filing.

(d) The Clerk's Office will set a hearing date approximately sixty (60) days after filing to allow time for the Court Investigator's report.

(e) In the case of a petition for guardianship of the person by a relative, notice shall be mailed to the Probate Investigator.

(f) In the case of a petition for guardianship of the person by a non-relative, notice under Probate Code Sections 1540 through 1543, inclusive, shall be mailed at least forty-five (45) days prior to the hearing date to:

(1) The State Department of Social Services; and

(2) Yolo County Department of Employment and Social Services.

(g) A declaration of due diligence is required where the petitioner cannot determine the name or address of a relative or party to whom notice is required. The declaration shall specify all efforts undertaken to identify and locate such relative or party. The petitioner should check the following and state the results in the declaration: telephone directory, directory assistance, relatives and friends, former employers, and last known address. *(Effective January 1, 2007)*

26.2 PENDING ADOPTION

Pursuant to Probate Code Section 1543, if it appears that adoption proceedings are pending, letters of guardianship will not be issued nor the hearing permitted until the agency investigating the adoption has filed its report. *(Effective January 1, 2007)*

26.3 INDIAN CHILD WELFARE ACT (ICWA)

Guardianships are subject to the provisions of the federal Indian Child Welfare Act (ICWA). If there is any reason to believe that the child has Native American

heritage, the petitioner shall provide notice to the appropriate tribe(s) and the Secretary of the Department of the Interior as required by ICWA. *(Effective January 1, 2007)*

26.4 GUARDIANSHIP HEARING

The minor and the proposed guardian shall attend the hearing to establish a guardianship of a minor, unless their presence is waived by the court. *(Effective January 1, 2007)*

26.5 PROBATE INVESTIGATOR OR SOCIAL SERVICES

(a) The Probate Investigator conducts an investigation on all petitions to establish a guardianship where the proposed guardian is a relative.

(b) Where the proposed guardian is a non-relative, Child Protective Services conducts the investigation. Any delay may cause a continuance. See Probate Code Section 1513(g) for the definition of relative.

(c) Once the guardianship is established, the Probate Investigator assists the court in reviewing guardianships of the person and the estate. Counsel and guardians shall cooperate fully with the Probate Investigator.

(d) The Probate Investigator shall be provided with a copy of all petitions to terminate a guardianship.

(e) Pursuant to Probate Code section 1513.1 and 1851.5, at the time of filing a petition to establish a guardianship, if the proposed guardian is a relative, a fee shall be assessed and paid for the Probate Investigator's report unless deferred or waived by the court. If the guardian or other person liable for payment of the assessment believes the fees should be deferred or waived due to hardship, the subject petition shall include a request for deferral or waiver and shall set forth facts establishing a hardship. Failure to make timely payment will not delay approval of any petition but will result in the matter being referred to collections. *(Effective January 1, 2007; As amended, eff 01/01/10; As amended, eff 01/01/11)*

26.6 TEMPORARY GUARDIANSHIPS

(a) All petitions for appointment of a temporary guardian should be submitted by ex parte application. Proof of service of the petition, pursuant to Probate Code Section 2250, shall be filed prior to the issuance of an order.

(b) If the court determines that a hearing on the petition for a temporary guardianship is necessary, notice will be sent by the court to the attorney and petitioner. Notice of that hearing shall then be given by the attorney and/or petitioner to those required to receive notice. *(Effective January 1, 2007)*

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

McGIRT *v.* OKLAHOMA

CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF OKLAHOMA

No. 18–9526. Argued May 11, 2020—Decided July 9, 2020

The Major Crimes Act (MCA) provides that, within "the Indian country," "[a]ny Indian who commits" certain enumerated offenses "shall be subject to the same law and penalties as all other persons committing any of [those] offenses, within the exclusive jurisdiction of the United States." 18 U. S. C. §1153(a). "Indian country" includes "all land within the limits of any Indian reservation under the jurisdiction of the United States Government." §1151. Petitioner Jimcy McGirt was convicted by an Oklahoma state court of three serious sexual offenses. He unsuccessfully argued in state postconviction proceedings that the State lacked jurisdiction to prosecute him because he is an enrolled member of the Seminole Nation and his crimes took place on the Creek Reservation. He seeks a new trial, which, he contends, must take place in federal court.

Held: For MCA purposes, land reserved for the Creek Nation since the 19th century remains "Indian country." Pp. 3–42.

(a) Congress established a reservation for the Creek Nation. An 1833 Treaty fixed borders for a "permanent home to the whole Creek Nation of Indians," 7 Stat. 418, and promised that the United States would "grant a patent, in fee simple, to the Creek nation of Indians for the [assigned] land" to continue "so long as they shall exist as a nation, and continue to occupy the country hereby assigned to them," *id.*, at 419. The patent formally issued in 1852.

Though the early treaties did not refer to the Creek lands as a "reservation," similar language in treaties from the same era has been held sufficient to create a reservation, see, *e.g.*, *Menominee Tribe* v. *United States,* 391 U. S. 404, 405, and later Acts of Congress—referring to the "Creek reservation"—leave no room for doubt, see, *e.g.*, 17 Stat. 626. In addition, an 1856 Treaty promised that "no portion" of Creek lands

Syllabus

"would ever be embraced or included within, or annexed to, any Territory or State," 11 Stat. 700, and that the Creeks would have the "unrestricted right of self-government," with "full jurisdiction" over enrolled Tribe members and their property, *id.*, at 704. Pp. 3–6.

(b) Congress has since broken more than a few promises to the Tribe. Nevertheless, the Creek Reservation persists today. Pp. 6–28.

(1) Once a federal reservation is established, only Congress can diminish or disestablish it. Doing so requires a clear expression of congressional intent. Pp. 6–8.

(2) Oklahoma claims that Congress ended the Creek Reservation during the so-called "allotment era"—a period when Congress sought to pressure many tribes to abandon their communal lifestyles and parcel their lands into smaller lots owned by individual tribal members. Missing from the allotment-era agreement with the Creek, see 31 Stat. 862–864, however, is any statute evincing anything like the "present and total surrender of all tribal interests" in the affected lands. And this Court has already rejected the argument that allotments automatically ended reservations. Pp. 8–13.

(3) Oklahoma points to other ways Congress intruded on the Creeks' promised right to self-governance during the allotment era, including abolishing the Creeks' tribal courts, 30 Stat. 504–505, and requiring Presidential approval for certain tribal ordinances, 31 Stat. 872. But these laws fall short of eliminating all tribal interest in the contested lands. Pp. 13–17.

(4) Oklahoma ultimately claims that historical practice and demographics are enough by themselves to prove disestablishment. This Court has consulted contemporaneous usages, customs, and practices to the extent they shed light on the meaning of ambiguous statutory terms, but Oklahoma points to no ambiguous language in any of the relevant statutes that could plausibly be read as an act of cession. Such extratextual considerations are of "'limited interpretive value,'" *Nebraska* v. *Parker*, 577 U. S. 481, ___, and the "least compelling" form of evidence, *South Dakota* v. *Yankton Sioux Tribe*, 522 U. S. 329, 356. In the end, Oklahoma resorts to the State's long historical practice of prosecuting Indians in state court for serious crimes on the contested lands, various statements made during the allotment era, and the speedy and persistent movement of white settlers into the area. But these supply little help with the law's meaning and much potential for mischief. Pp. 17–28.

(c) In the alternative, Oklahoma contends that Congress never established a reservation but instead created a "dependent Indian community." To hold that the Creek never had a reservation would require willful blindness to the statutory language and a belief that the land

patent the Creek received somehow made their tribal sovereignty easier to divest. Congress established a reservation, not a dependent Indian community, for the Creek Nation. Pp. 28–31.

(d) Even assuming that the Creek land is a reservation, Oklahoma argues that the MCA has never applied in eastern Oklahoma. It claims that the Oklahoma Enabling Act, which transferred all nonfederal cases pending in the territorial courts to Oklahoma's state courts, made the State's courts the successors to the federal territorial courts' sweeping authority to try Indians for crimes committed on reservations. That argument, however, rests on state prosecutorial practices that defy the MCA, rather than on the law's plain terms. Pp. 32–36.

(e) Finally, Oklahoma warns of the potential consequences that will follow a ruling against it, such as unsettling an untold number of convictions and frustrating the State's ability to prosecute crimes in the future. This Court is aware of the potential for cost and conflict around jurisdictional boundaries. But Oklahoma and its tribes have proven time and again that they can work successfully together as partners, and Congress remains free to supplement its statutory directions about the lands in question at any time. Pp. 36–42.

Reversed.

GORSUCH, J., delivered the opinion of the Court, in which GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. ROBERTS, C. J., filed a dissenting opinion, in which ALITO and KAVANAUGH, JJ., joined, and in which THOMAS, J., joined, except as to footnote 9. THOMAS, J., filed a dissenting opinion.

SUPREME COURT OF THE UNITED STATES

No. 18–9526

JIMCY MCGIRT, PETITIONER *v.* OKLAHOMA

ON WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF OKLAHOMA

[July 9, 2020]

JUSTICE GORSUCH delivered the opinion of the Court.

On the far end of the Trail of Tears was a promise. Forced to leave their ancestral lands in Georgia and Alabama, the Creek Nation received assurances that their new lands in the West would be secure forever. In exchange for ceding "all their land, East of the Mississippi river," the U. S. government agreed by treaty that "[t]he Creek country west of the Mississippi shall be solemnly guarantied to the Creek Indians." Treaty With the Creeks, Arts. I, XIV, Mar. 24, 1832, 7 Stat. 366, 368 (1832 Treaty). Both parties settled on boundary lines for a new and "permanent home to the whole Creek nation," located in what is now Oklahoma. Treaty With the Creeks, preamble, Feb. 14, 1833, 7 Stat. 418 (1833 Treaty). The government further promised that "[no] State or Territory [shall] ever have a right to pass laws for the government of such Indians, but they shall be allowed to govern themselves." 1832 Treaty, Art. XIV, 7 Stat. 368.

Today we are asked whether the land these treaties promised remains an Indian reservation for purposes of federal criminal law. Because Congress has not said otherwise, we hold the government to its word.

I

At one level, the question before us concerns Jimcy McGirt. Years ago, an Oklahoma state court convicted him of three serious sexual offenses. Since then, he has argued in postconviction proceedings that the State lacked jurisdiction to prosecute him because he is an enrolled member of the Seminole Nation of Oklahoma and his crimes took place on the Creek Reservation. A new trial for his conduct, he has contended, must take place in federal court. The Oklahoma state courts hearing Mr. McGirt's arguments rejected them, so he now brings them here.

Mr. McGirt's appeal rests on the federal Major Crimes Act (MCA). The statute provides that, within "the Indian country," "[a]ny Indian who commits" certain enumerated offenses "against the person or property of another Indian or any other person" "shall be subject to the same law and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States." 18 U. S. C. §1153(a). By subjecting Indians to federal trials for crimes committed on tribal lands, Congress may have breached its promises to tribes like the Creek that they would be free to govern themselves. But this particular incursion has its limits—applying only to certain enumerated crimes and allowing only the federal government to try Indians. State courts generally have no jurisdiction to try Indians for conduct committed in "Indian country." *Negonsott* v. *Samuels*, 507 U. S. 99, 102–103 (1993).

The key question Mr. McGirt faces concerns that last qualification: Did he commit his crimes in Indian country? A neighboring provision of the MCA defines the term to include, among other things, "all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation." §1151(a). Mr. McGirt submits he can satisfy

this condition because he committed his crimes on land reserved for the Creek since the 19th century.

The Creek Nation has joined Mr. McGirt as *amicus curiae*. Not because the Tribe is interested in shielding Mr. McGirt from responsibility for his crimes. Instead, the Creek Nation participates because Mr. McGirt's personal interests wind up implicating the Tribe's. No one disputes that Mr. McGirt's crimes were committed on lands described as the Creek Reservation in an 1866 treaty and federal statute. But, in seeking to defend the state-court judgment below, Oklahoma has put aside whatever procedural defenses it might have and asked us to confirm that the land once given to the Creeks is no longer a reservation today.

At another level, then, Mr. McGirt's case winds up as a contest between State and Tribe. The scope of their dispute is limited; nothing we might say today could unsettle Oklahoma's authority to try non-Indians for crimes against non-Indians on the lands in question. See *United States* v. *McBratney*, 104 U. S. 621, 624 (1882). Still, the stakes are not insignificant. If Mr. McGirt and the Tribe are right, the State has no right to prosecute Indians for crimes committed in a portion of Northeastern Oklahoma that includes most of the city of Tulsa. Responsibility to try these matters would fall instead to the federal government and Tribe. Recently, the question has taken on more salience too. While Oklahoma state courts have rejected any suggestion that the lands in question remain a reservation, the Tenth Circuit has reached the opposite conclusion. *Murphy* v. *Royal*, 875 F. 3d 896, 907–909, 966 (2017). We granted certiorari to settle the question. 589 U. S. ___ (2019).

II

Start with what should be obvious: Congress established a reservation for the Creeks. In a series of treaties, Con-

gress not only "solemnly guarantied" the land but also "establish[ed] boundary lines which will secure a country and permanent home to the whole Creek Nation of Indians." 1832 Treaty, Art. XIV, 7 Stat. 368; 1833 Treaty, preamble, 7 Stat. 418. The government's promises weren't made gratuitously. Rather, the 1832 Treaty acknowledged that "[t]he United States are desirous that the Creeks should remove to the country west of the Mississippi" and, in service of that goal, required the Creeks to cede all lands in the East. Arts. I, XII, 7 Stat. 366, 367. Nor were the government's promises meant to be delusory. Congress twice assured the Creeks that "[the] Treaty shall be obligatory on the contracting parties, as soon as the same shall be ratified by the United States." 1832 Treaty, Art. XV, *id.*, at 368; see 1833 Treaty, Art. IX, 7 Stat. 420 ("agreement shall be binding and obligatory" upon ratification). Both treaties were duly ratified and enacted as law.

Because the Tribe's move west was ostensibly voluntary, Congress held out another assurance as well. In the statute that precipitated these negotiations, Congress authorized the President "to assure the tribe . . . that the United States will forever secure and guaranty to them . . . the country so exchanged with them." Indian Removal Act of 1830, §3, 4 Stat. 412. "[A]nd if they prefer it," the bill continued, "the United States will cause a patent or grant to be made and executed to them for the same; *Provided always*, that such lands shall revert to the United States, if the Indians become extinct, or abandon the same." *Ibid.* If agreeable to all sides, a tribe would not only enjoy the government's solemn treaty promises; it would hold legal title to its lands.

It was an offer the Creek accepted. The 1833 Treaty fixed borders for what was to be a "permanent home to the whole Creek nation of Indians." 1833 Treaty, preamble, 7 Stat. 418. It also established that the "United States will grant a patent, in fee simple, to the Creek nation of Indians for the land assigned said nation by this treaty." Art. III, *id.*,

at 419. That grant came with the caveat that "the right thus guaranteed by the United States shall be continued to said tribe of Indians, so long as they shall exist as a nation, and continue to occupy the country hereby assigned to them." *Ibid.* The promised patent formally issued in 1852. See *Woodward* v. *De Graffenried*, 238 U. S. 284, 293–294 (1915).

These early treaties did not refer to the Creek lands as a "reservation"—perhaps because that word had not yet acquired such distinctive significance in federal Indian law. But we have found similar language in treaties from the same era sufficient to create a reservation. See *Menominee Tribe* v. *United States*, 391 U. S. 404, 405 (1968) (grant of land "'for a home, to be held as Indian lands are held,'" established a reservation). And later Acts of Congress left no room for doubt. In 1866, the United States entered yet another treaty with the Creek Nation. This agreement reduced the size of the land set aside for the Creek, compensating the Tribe at a price of 30 cents an acre. Treaty Between the United States and the Creek Nation of Indians, Art. III, June 14, 1866, 14 Stat. 786. But Congress explicitly restated its commitment that the remaining land would "be forever set apart as a home for said Creek Nation," which it now referred to as "the reduced Creek reservation." Arts. III, IX, *id.*, at 786, 788.[1] Throughout the late

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[1] The dissent by THE CHIEF JUSTICE (hereinafter the dissent) suggests that the Creek's intervening alliance with the Confederacy "'unsettled'" and "'forfeit[ed]'" the longstanding promises of the United States. *Post,* at 3. But the Treaty of 1866 put an end to any Civil War hostility, promising mutual amnesty, "perpetual peace and friendship," and guaranteeing the Tribe the "quiet possession of their country." Art. I, 14 Stat. 786. Though this treaty expressly reduced the size of the Creek Reservation, the Creek were compensated for the lost territory, and otherwise "retained" their unceded portion. Art. III, *ibid.* Contrary to the dissent's implication, nothing in the Treaty of 1866 purported to repeal prior treaty promises. Cf. Art. XII, *id.,* at 790 (the United States expressly "reaffirms and reassumes all obligations of treaty stipulations with the

19th century, many other federal laws also expressly referred to the Creek Reservation. See, *e.g.,* Treaty Between United States and Cherokee Nation of Indians, Art. IV, July 19, 1866, 14 Stat. 800 ("Creek reservation"); Act of Mar. 3, 1873, ch. 322, 17 Stat. 626; (multiple references to the "Creek reservation" and "Creek India[n] Reservation"); 11 Cong. Rec. 2351 (1881) (discussing "the dividing line between the Creek reservation and their ceded lands"); Act of Feb. 13, 1891, 26 Stat. 750 (describing a cession by referencing the "West boundary line of the Creek Reservation").

There is a final set of assurances that bear mention, too. In the Treaty of 1856, Congress promised that "no portion" of the Creek Reservation "shall ever be embraced or included within, or annexed to, any Territory or State." Art. IV, 11 Stat. 700. And within their lands, with exceptions, the Creeks were to be "secured in the unrestricted right of self-government," with "full jurisdiction" over enrolled Tribe members and their property. Art. XV, *id.*, at 704. So the Creek were promised not only a "permanent home" that would be "forever set apart"; they were also assured a right to self-government on lands that would lie outside both the legal jurisdiction and geographic boundaries of any State. Under any definition, this was a reservation.

III

A

While there can be no question that Congress established a reservation for the Creek Nation, it's equally clear that Congress has since broken more than a few of its promises to the Tribe. Not least, the land described in the parties' treaties, once undivided and held by the Tribe, is now fractured into pieces. While these pieces were initially distributed to Tribe members, many were sold and now belong to persons unaffiliated with the Nation. So in what sense, if

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Creek nation entered into before" the Civil War).

any, can we say that the Creek Reservation persists today?

To determine whether a tribe continues to hold a reservation, there is only one place we may look: the Acts of Congress. This Court long ago held that the Legislature wields significant constitutional authority when it comes to tribal relations, possessing even the authority to breach its own promises and treaties. *Lone Wolf* v. *Hitchcock*, 187 U. S. 553, 566–568 (1903). But that power, this Court has cautioned, belongs to Congress alone. Nor will this Court lightly infer such a breach once Congress has established a reservation. *Solem* v. *Bartlett*, 465 U. S. 463, 470 (1984).

Under our Constitution, States have no authority to reduce federal reservations lying within their borders. Just imagine if they did. A State could encroach on the tribal boundaries or legal rights Congress provided, and, with enough time and patience, nullify the promises made in the name of the United States. That would be at odds with the Constitution, which entrusts Congress with the authority to regulate commerce with Native Americans, and directs that federal treaties and statutes are the "supreme Law of the Land." Art. I, §8; Art. VI, cl. 2. It would also leave tribal rights in the hands of the very neighbors who might be least inclined to respect them.

Likewise, courts have no proper role in the adjustment of reservation borders. Mustering the broad social consensus required to pass new legislation is a deliberately hard business under our Constitution. Faced with this daunting task, Congress sometimes might wish an inconvenient reservation would simply disappear. Short of that, legislators might seek to pass laws that tiptoe to the edge of disestablishment and hope that judges—facing no possibility of electoral consequences themselves—will deliver the final push. But wishes don't make for laws, and saving the political branches the embarrassment of disestablishing a reservation is not one of our constitutionally assigned prerogatives. "[O]nly Congress can divest a reservation of its land and

diminish its boundaries." *Solem*, 465 U. S., at 470. So it's no matter how many other promises to a tribe the federal government has already broken. If Congress wishes to break the promise of a reservation, it must say so.

History shows that Congress knows how to withdraw a reservation when it can muster the will. Sometimes, legislation has provided an "[e]xplicit reference to cession" or an "unconditional commitment . . . to compensate the Indian tribe for its opened land." *Ibid.* Other times, Congress has directed that tribal lands shall be "'restored to the public domain.'" *Hagen* v. *Utah*, 510 U. S. 399, 412 (1994) (emphasis deleted). Likewise, Congress might speak of a reservation as being "'discontinued,'" "'abolished,'" or "'vacated.'" *Mattz* v. *Arnett*, 412 U. S. 481, 504, n. 22 (1973). Disestablishment has "never required any particular form of words," *Hagen*, 510 U. S., at 411. But it does require that Congress clearly express its intent to do so, "[c]ommon[ly with an] '[e]xplicit reference to cession or other language evidencing the present and total surrender of all tribal interests.' " *Nebraska* v. *Parker*, 577 U. S. 481, ___–___ (2016) (slip op., at 6).

B

In an effort to show Congress has done just that with the Creek Reservation, Oklahoma points to events during the so-called "allotment era." Starting in the 1880s, Congress sought to pressure many tribes to abandon their communal lifestyles and parcel their lands into smaller lots owned by individual tribe members. See 1 F. Cohen, Handbook of Federal Indian Law §1.04 (2012) (Cohen), discussing General Allotment Act of 1887, ch. 119, 24 Stat. 388. Some allotment advocates hoped that the policy would create a class of assimilated, landowning, agrarian Native Americans. See Cohen §1.04; F. Hoxie, A Final Promise: The Campaign To Assimilate 18–19 (2001). Others may have hoped that, with lands in individual hands and (eventually)

freely alienable, white settlers would have more space of their own. See *id.*, at 14–15; cf. General Allotment Act of 1887, §5, 24 Stat. 389–390.

The Creek were hardly exempt from the pressures of the allotment era. In 1893, Congress charged the Dawes Commission with negotiating changes to the Creek Reservation. Congress identified two goals: Either persuade the Creek to cede territory to the United States, as it had before, or agree to allot its lands to Tribe members. Act of Mar. 3, 1893, ch. 209, §16, 27 Stat. 645–646. A year later, the Commission reported back that the Tribe "would not, under any circumstances, agree to cede any portion of their lands." S. Misc. Doc. No. 24, 53d Cong., 3d Sess., 7 (1894). At that time, before this Court's decision in *Lone Wolf*, Congress may not have been entirely sure of its power to terminate an established reservation unilaterally. Perhaps for that reason, perhaps for others, the Commission and Congress took this report seriously and turned their attention to allotment rather than cession.[2]

The Commission's work culminated in an allotment agreement with the Tribe in 1901. Creek Allotment Agreement, ch. 676, 31 Stat. 861. With exceptions for certain preexisting town sites and other special matters, the Agreement established procedures for allotting 160-acre parcels to individual Tribe members who could not sell, transfer, or otherwise encumber their allotments for a number of years. §§3, 7, *id.*, at 862–864 (5 years for any portion, 21 years for the designated "homestead" portion). Tribe members were given deeds for their parcels that "convey[ed] to [them] all right, title, and interest of the Creek Nation." §23, *id.*, at

[2]The dissent stresses, repeatedly, that the Dawes Commission was charged with seeking to extinguish the reservation. *Post,* at 18, 24. Yet, the dissent fails to mention the Commission's various reports acknowledging that those efforts were unsuccessful precisely because the Creek refused to cede their lands.

867–868. In 1908, Congress relaxed these alienation restrictions in some ways, and even allowed the Secretary of the Interior to waive them. Act of May 27, 1908, ch. 199, §1, 35 Stat. 312. One way or the other, individual Tribe members were eventually free to sell their land to Indians and non-Indians alike.

Missing in all this, however, is a statute evincing anything like the "present and total surrender of all tribal interests" in the affected lands. Without doubt, in 1832 the Creek "cede[d]" their original homelands east of the Mississippi for a reservation promised in what is now Oklahoma. 1832 Treaty, Art. I, 7 Stat. 366. And in 1866, they "cede[d] and convey[ed]" a portion of that reservation to the United States. Treaty With the Creek, Art. III, 14 Stat. 786. But because there exists no equivalent law terminating what remained, the Creek Reservation survived allotment.

In saying this we say nothing new. For years, States have sought to suggest that allotments automatically ended reservations, and for years courts have rejected the argument. Remember, Congress has defined "Indian country" to include "all land within the limits of any Indian reservation . . . notwithstanding the issuance of any patent, and, including any rights-of-way running through the reservation." 18 U. S. C. §1151(a). So the relevant statute expressly contemplates private land ownership within reservation boundaries. Nor under the statute's terms does it matter whether these individual parcels have passed hands to non-Indians. To the contrary, this Court has explained repeatedly that Congress does not disestablish a reservation simply by allowing the transfer of individual plots, whether to Native Americans or others. See *Mattz*, 412 U. S., at 497 ("[A]llotment under the . . . Act is completely consistent with continued reservation status"); *Seymour* v. *Superintendent of Wash. State Penitentiary*, 368 U. S. 351, 356–358 (1962) (holding that allotment act "did no more than open the way for non-Indian settlers to own land on the reservation");

Parker, 577 U. S., at ___ (slip op., at 7) ("[T]he 1882 Act falls into another category of surplus land Acts: those that merely opened reservation land to settlement. . . . Such schemes allow non-Indian settlers to own land on the reservation" (internal quotation marks omitted)).

It isn't so hard to see why. The federal government issued its own land patents to many homesteaders throughout the West. These patents transferred legal title and are the basis for much of the private land ownership in a number of States today. But no one thinks any of this diminished the United States's claim to sovereignty over any land. To accomplish that would require an act of cession, the transfer of a sovereign claim from one nation to another. 3 E. Washburn, American Law of Real Property *521–*524. And there is no reason why Congress cannot reserve land for tribes in much the same way, allowing them to continue to exercise governmental functions over land even if they no longer own it communally. Indeed, such an arrangement seems to be contemplated by §1151(a)'s plain terms. Cf. *Seymour*, 368 U. S., at 357–358.[3]

Oklahoma reminds us that allotment was often the first step in a plan ultimately aimed at disestablishment. As this Court explained in *Mattz*, Congress's expressed policy at the time "was to continue the reservation system and the trust status of Indian lands, but to allot tracts to individual Indians for agriculture and grazing." 412 U. S., at 496. Then, "[w]hen all the lands had been allotted and the trust expired, the reservation could be abolished." *Ibid.* This plan was set in motion nationally in the General Allotment

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[3] The dissent not only fails to acknowledge these features of the statute and our precedents. It proceeds in defiance of them, suggesting that by moving to eliminate communal title and relaxing restrictions on alienation, "Congress destroyed the foundation of [the Creek Nation's] sovereignty." *Post*, at 18–19. But this Court long ago rejected the notion that the purchase of lands by non-Indians is inconsistent with reservation status. See *Seymour*, 368 U. S., at 357–358.

Act of 1887, and for the Creek specifically in 1901. No doubt, this is why Congress at the turn of the 20th century "believed to a man" that "the reservation system would cease" "within a generation at most." *Solem*, 465 U. S., at 468. Still, just as wishes are not laws, future plans aren't either. Congress may have passed allotment laws to create the conditions for disestablishment. But to equate allotment with disestablishment would confuse the first step of a march with arrival at its destination.[4]

Ignoring this distinction would run roughshod over many other statutes as well. In some cases, Congress chose not to wait for allotment to run its course before disestablishing a reservation. When it deemed that approach appropriate, Congress included additional language expressly ending reservation status. So, for example, in 1904, Congress allotted reservations belonging to the Ponca and Otoe Tribes, reservations also lying within modern-day Oklahoma, and then provided "further, That the reservation lines of the said . . . reservations . . . are hereby abolished." Act of Apr. 21, 1904, §8, 33 Stat. 217–218 (emphasis deleted); see also *DeCoteau* v. *District County Court for Tenth Judicial Dist.*, 420 U. S. 425, 439–440, n. 22 (1975) (collecting other examples). Tellingly, however, nothing like that can be found in the nearly contemporary 1901 Creek Allotment Agreement or the 1908 Act. That doesn't make these laws special. Rather, in using the language that they did, these allotment laws tracked others of the period, parceling out individual

[4] The dissent seemingly conflates these steps in other ways, too, by implying that the passage of an allotment Act *itself* extinguished title. *Post,* at 18–19. The reality proved more complicated. Allotment of the Creek lands did not occur overnight, but dragged on for years, well past Oklahoma's statehood, until Congress finally prohibited any further allotments more than 15 years later. Act of Mar. 2, 1917, 39 Stat. 986.

tracts, while saving the ultimate fate of the land's reservation status for another day.[5]

C

If allotment by itself won't work, Oklahoma seeks to prove disestablishment by pointing to other ways Congress intruded on the Creek's promised right to self-governance during the allotment era. It turns out there were many. For example, just a few years before the 1901 Creek Allotment Agreement, and perhaps in an effort to pressure the Tribe to the negotiating table, Congress abolished the Creeks' tribal courts and transferred all pending civil and criminal cases to the U. S. Courts of the Indian Territory. Curtis Act of 1898, §28, 30 Stat. 504–505. Separately, the Creek Allotment Agreement provided that tribal ordinances "affecting the lands of the Tribe, or of individuals after allotment, or the moneys or other property of the Tribe, or of the citizens thereof" would not be valid until approved by the President of the United States. §42, 31 Stat. 872.

Plainly, these laws represented serious blows to the

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[5]The dissent doesn't purport to find any of the hallmarks of diminishment in the Creek Allotment Agreement. Instead, the dissent tries to excuse their absence by saying that it would have made "little sense" to find such language in an Act transferring the Tribe's lands to private owners. *Post*, at 14. But the dissent's account is impossible to reconcile with history and precedent. As we have noted, plenty of allotment agreements during this era included precisely the language of cession and compensation that the dissent says it would make "little sense" to find there. And this Court has confirmed time and again that allotment agreements without such language do not necessarily disestablish or diminish the reservation at issue. See *Mattz* v. *Arnett*, 412 U. S. 481, 497 (1973); *Seymour* v. *Superintendent* of *Wash. State Penitentiary*, 368 U. S. 351, 358 (1962). The dissent's only answer is to suggest that allotment combined with *other* statutes limiting the Creek Nation's governing authority amounted to disestablishment—in other words that it's the arguments in the *next* section that really do the work.

Creek. But, just as plainly, they left the Tribe with significant sovereign functions over the lands in question. For example, the Creek Nation retained the power to collect taxes, operate schools, legislate through tribal ordinances, and, soon, oversee the federally mandated allotment process. §§39, 40, 42, *id.*, at 871–872; *Buster* v. *Wright*, 135 F. 947, 949–950, 953–954 (CA8 1905). And, in its own way, the congressional incursion on tribal legislative processes only served to prove the power: Congress would have had no need to subject tribal legislation to Presidential review if the Tribe lacked any authority to legislate. Grave though they were, these congressional intrusions on pre-existing treaty rights fell short of eliminating all tribal interests in the land.

Much more ominously, the 1901 allotment agreement ended by announcing that the Creek tribal government "shall not continue" past 1906, although the agreement quickly qualified that statement, adding the proviso "subject to such further legislation as Congress may deem proper." §46, 31 Stat. 872. Thus, while suggesting that the tribal government *might* end in 1906, Congress also necessarily understood it had not ended in 1901. All of which was consistent with the Legislature's general practice of taking allotment as a first, not final, step toward disestablishment and dissolution.

When 1906 finally arrived, Congress adopted the Five Civilized Tribes Act. But instead of dissolving the tribal government as some may have expected, Congress "deem[ed] proper" a different course, simply cutting away further at the Tribe's autonomy. Congress empowered the President to remove and replace the principal chief of the Creek, prohibited the tribal council from meeting more than 30 days a year, and directed the Secretary of the Interior to assume control of tribal schools. §§6, 10, 28, 34 Stat. 139–140, 148. The Act also provided for the handling of the

Tribe's funds, land, and legal liabilities in the event of dissolution. §§11, 27, *id.*, at 141, 148. Despite these additional incursions on tribal authority, however, Congress expressly recognized the Creek's "tribal existence and present tribal governmen[t]" and "continued [them] in full force and effect for all purposes authorized by law." §28, *id.*, at 148.

In the years that followed, Congress continued to adjust its arrangements with the Tribe. For example, in 1908, the Legislature required Creek officials to turn over all "tribal properties" to the Secretary of the Interior. Act of May 27, 1908, §13, 35 Stat. 316. The next year, Congress sought the Creek National Council's release of certain money claims against the U. S. government. Act of Mar. 3, 1909, ch. 263, 35 Stat. 781, 805. And, further still, Congress offered the Creek Nation a one-time opportunity to file suit in the federal Court of Claims for "any and all legal and equitable claims arising under or growing out of any treaty or agreement between the United States and the Creek Indian Nation." Act of May 24, 1924, ch. 181, 43 Stat. 139; see, *e.g., United States* v. *Creek Nation*, 295 U. S. 103 (1935). But Congress never withdrew its recognition of the tribal government, and none of its adjustments would have made any sense if Congress thought it had already completed that job.

Indeed, with time, Congress changed course completely. Beginning in the 1920s, the federal outlook toward Native Americans shifted "away from assimilation policies and toward more tolerance and respect for traditional aspects of Indian culture." 1 Cohen §1.05. Few in 1900 might have foreseen such a profound "reversal of attitude" was in the making or expected that "new protections for Indian rights," including renewed "support for federally defined tribalism," lurked around the corner. *Ibid.*; see also M. Scherer, Imperfect Victories: The Legal Tenacity of the Omaha Tribe, 1945–1995, pp. 2–4 (1999). But that is exactly what happened. Pursuant to this new national policy,

in 1936, Congress authorized the Creek to adopt a constitution and bylaws, see Act of June 26, 1936, §3, 49 Stat. 1967, enabling the Creek government to resume many of its previously suspended functions. *Muscogee (Creek) Nation* v. *Hodel*, 851 F. 2d 1439, 1442–1447 (CADC 1988).[6]

The Creek Nation has done exactly that. In the intervening years, it has ratified a new constitution and established three separate branches of government. *Ibid.*; see Muscogee Creek Nation (MCN) Const., Arts. V, VI, and VII. Today the Nation is led by a democratically elected Principal Chief, Second Chief, and National Council; operates a police force and three hospitals; commands an annual budget of more than $350 million; and employs over 2,000 people. Brief for Muscogee (Creek) Nation as *Amicus Curiae* 36–39. In 1982, the Nation passed an ordinance reestablishing the criminal and civil jurisdiction of its courts. See *Hodel*, 851 F. 2d, at 1442, 1446–1447 (confirming Tribe's authority to do so). The territorial jurisdiction of these courts extends to any Indian country within the Tribe's territory as defined by the Treaty of 1866. MCN Stat. 27, §1–102(A). And the State of Oklahoma has afforded full faith and credit to its judgments since at least 1994. See *Barrett* v. *Barrett*, 878

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[6]The dissent calls it "fantasy" to suggest that Congress evinced "any unease about extinguishing the Creek domain" because Congress "did what it set out to do: transform a reservation into a State." *Post,* at 22–23. The dissent stresses, too, that the Creek were afforded U. S. citizenship and the right to vote. *Post,* at 20. But the only thing implausible here is the suggestion that "creat[ing] a new State" or enfranchising Native Americans implies an "intent to terminate" any and all reservations within a State's boundaries. *Post,* at 15. This Court confronted—and rejected—that sort of argument long ago in *United States* v. *Sandoval*, 231 U. S. 28, 47–48 (1913). The dissent treats that case as a one-off: special because "the tribe in *Sandoval*, the Pueblo Indians of New Mexico, retained a rare communal title to their lands." *Post*, at 21, n. 4. But *Sandoval* is not only a case about the Pueblos; it is a foundational precedent recognizing that Congress can welcome Native Americans to participate in a broader political community without sacrificing their tribal sovereignty.

P. 2d 1051, 1054 (Okla. 1994); Full Faith and Credit of Tribal Courts, Okla. State Cts. Network (Apr. 18, 2019), https://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=458214.

Maybe some of these changes happened for altruistic reasons, maybe some for other reasons. It seems, for example, that at least certain Members of Congress hesitated about disestablishment in 1906 because they feared any reversion of the Creek lands to the public domain would trigger a statutory commitment to hand over portions of these lands to already powerful railroad interests. See, *e.g.*, 40 Cong. Rec. 2976 (1906) (Sen. McCumber); *Id.*, at 3053 (Sen. Aldrich). Many of those who advanced the reorganization efforts of the 1930s may have done so more out of frustration with efforts to assimilate Native Americans than any disaffection with assimilation as the ultimate goal. See 1 Cohen §1.05; Scherer, Imperfect Victories, at 2–4. But whatever the confluence of reasons, in all this history there simply arrived no moment when any Act of Congress dissolved the Creek Tribe or disestablished its reservation. In the end, Congress moved in the opposite direction.[7]

D

Ultimately, Oklahoma is left to pursue a very different sort of argument. Now, the State points to historical practices and demographics, both around the time of and long after the enactment of all the relevant legislation. These facts, the State submits, are enough by themselves to prove disestablishment. Oklahoma even classifies and catego-

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[7]The dissent ultimately concedes what Oklahoma will not: that no "individual congressional action or piece of evidence, standing alone, disestablished the Creek reservation." *Post*, at 9–10. Instead we're told we must consider "all of the relevant Acts of Congress together, viewed in light of contemporaneous and subsequent contextual evidence." *Ibid.* So, once again, the dissent seems to suggest that it's the arguments in the *next* section that will get us across the line to disestablishment.

rizes how we should approach the question of disestablishment into three "steps." It reads *Solem* as requiring us to examine the laws passed by Congress at the first step, contemporary events at the second, and even later events and demographics at the third. On the State's account, we have so far finished only the first step; two more await.

This is mistaken. When interpreting Congress's work in this arena, no less than any other, our charge is usually to ascertain and follow the original meaning of the law before us. *New Prime Inc.* v. *Oliveira*, 586 U. S. ___, ___ (2019) (slip op., at 6). That is the only "step" proper for a court of law. To be sure, if during the course of our work an ambiguous statutory term or phrase emerges, we will sometimes consult contemporaneous usages, customs, and practices to the extent they shed light on the meaning of the language in question at the time of enactment. *Ibid*. But Oklahoma does not point to any ambiguous language in any of the relevant statutes that could plausibly be read as an Act of disestablishment. Nor may a court favor contemporaneous or later practices *instead of* the laws Congress passed. As *Solem* explained, "[o]nce a block of land is set aside for an Indian reservation and no matter what happens to the title of individual plots within the area, the entire block retains its reservation status until Congress explicitly indicates otherwise." 465 U. S., at 470 (citing *United States* v. *Celestine*, 215 U. S. 278, 285 (1909)).

Still, Oklahoma reminds us that *other* language in *Solem* isn't so constrained. In particular, the State highlights a passage suggesting that "[w]here non-Indian settlers flooded into the opened portion of a reservation and the area has long since lost its Indian character, we have acknowledged that *de facto*, if not *de jure*, diminishment may have occurred." 465 U. S., at 471. While acknowledging that resort to subsequent demographics was "an unorthodox and potentially unreliable method of statutory interpretation," the Court seemed nonetheless taken by its

"obvious practical advantages." *Id.*, at 472, n. 13, 471.

Out of context, statements like these might suggest historical practices or current demographics can suffice to disestablish or diminish reservations in the way Oklahoma envisions. But, in the end, *Solem* itself found these kinds of arguments provided "no help" in resolving the dispute before it. *Id.*, at 478. Notably, too, *Solem* suggested that whatever utility historical practice or demographics might have was "demonstrated" by this Court's earlier decision in *Rosebud Sioux Tribe* v. *Kneip*, 430 U. S. 584 (1977). See *Solem*, 465 U. S., at 470, n. 10. And *Rosebud Sioux* hardly endorsed the use of such sources to find disestablishment. Instead, based on the statute at issue there, the Court came "to the firm conclusion that congressional intent" was to diminish the reservation in question. 430 U. S., at 603. At that point, the Tribe sought to cast doubt on the clear import of the text by citing subsequent historical events—and the Court rejected the Tribe's argument *exactly because* this kind of evidence could not overcome congressional intent as expressed in a statute. *Id.*, at 604–605.

This Court has already sought to clarify that extratextual considerations hardly supply the blank check Oklahoma supposes. In *Parker*, for example, we explained that "[e]vidence of the subsequent treatment of the disputed land . . . has 'limited interpretive value.'" 577 U. S., at ___ (slip op., at 11) (quoting *South Dakota* v. *Yankton Sioux Tribe*, 522 U. S. 329, 355 (1998)).[8] *Yankton Sioux* called it the "least

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[8]The dissent suggests *Parker* meant to say only that evidence of subsequent treatment had limited interpretative value "*in that case*." *Post,* at 12. But the dissent includes just a snippet of the relevant passage. Read in full, there is little room to doubt *Parker* invoked a general rule:

"This subsequent demographic history cannot overcome our conclusion that Congress did not intend to diminish the reservation in 1882. And it is not our rule to 'rewrite' the 1882 Act in light of this subsequent demographic history. *DeCoteau*, 420 U. S., at 447. After all, evidence of the changing demographics of disputed land is 'the least compelling' evi-

compelling" form of evidence. *Id.*, at 356. Both cases emphasized that what value such evidence has can only be *interpretative*—evidence that, at best, might be used to the extent it sheds light on what the terms found in a statute meant at the time of the law's adoption, not as an alternative means of proving disestablishment or diminishment.

To avoid further confusion, we restate the point. There is no need to consult extratextual sources when the meaning of a statute's terms is clear. Nor may extratextual sources overcome those terms. The only role such materials can properly play is to help "clear up . . . not create" ambiguity about a statute's original meaning. *Milner* v. *Department of Navy*, 562 U. S. 562, 574 (2011). And, as we have said time and again, once a reservation is established, it retains that status "until Congress explicitly indicates otherwise." *Solem*, 465 U. S., at 470 (citing *Celestine*, 215 U. S., at 285); see also *Yankton Sioux*, 522 U. S., at 343 ("[O]nly Congress can alter the terms of an Indian treaty by diminishing a reservation, and its intent to do so must be clear and plain") (citation and internal quotation marks omitted).

The dissent charges that we have failed to take account of the "compelling reasons" for considering extratextual evidence as a matter of course. *Post*, at 11–12. But Oklahoma and the dissent have cited no case in which this Court has found a reservation disestablished without first concluding that a statute required that result. Perhaps they wish this case to be the first. To follow Oklahoma and the dissent down that path, though, would only serve to allow States and courts to finish work Congress has left undone, usurp

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dence in our diminishment analysis, for '[e]very surplus land Act necessarily resulted in a surge of non-Indian settlement and degraded the "Indian character" of the reservation, yet we have repeatedly stated that not every surplus land Act diminished the affected reservation.' *Yankton Sioux*, 522 U. S., at 356. . . . Evidence of the subsequent treatment of the disputed land by Government officials likewise has 'limited interpretive value.' *Id.*, at 355." 577 U. S., at ___ (slip op., at 11).

the legislative function in the process, and treat Native American claims of statutory right as less valuable than others. None of that can be reconciled with our normal interpretive rules, let alone our rule that disestablishment may not be lightly inferred and treaty rights are to be construed in favor, not against, tribal rights. *Solem*, 465 U. S., at 472.[9]

To see the perils of substituting stories for statutes, we need look no further than the stories we are offered in the case before us. Put aside that the Tribe could tell more than a few stories of its own: Take just the evidence on which Oklahoma and the dissent wish to rest their case. First, they point to Oklahoma's long historical prosecutorial practice of asserting jurisdiction over Indians in state court, even for serious crimes on the contested lands. If the Creek lands really were part of a reservation, the argument goes, all of these cases should have been tried in federal court pursuant to the MCA. Yet, until the Tenth Circuit's *Murphy* decision a few years ago, no court embraced that possibility. See *Murphy*, 875 F. 3d 896. Second, they offer statements from various sources to show that "everyone" in the late 19th and early 20th century thought the reservation system—and the Creek Nation—would be disbanded soon. Third, they stress that non-Indians swiftly moved on to the reservation in the early part of the last century, that Tribe

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[9] In an effort to support its very different course, the dissent stitches together quotes from *Rosebud Sioux Tribe* v. *Knelp*, 430 U. S. 584 (1977), and *South Dakota* v. *Yankton Sioux Tribe*, 522 U. S. 329 (1998). *Post,* at 10–11. But far from supporting the dissent, both cases emphasize that "[t]he focus of our inquiry is congressional intent," *Rosebud*, 430 U. S., at 588, n. 4; see also *Yankton Sioux*, 522 U. S., at 343, and merely acknowledge that extratextual sources may help resolve ambiguity about Congress's directions. The dissent's appeal to *Solem* fares no better. As we have seen, the extratextual sources in S*olem* only confirmed what the relevant statute already suggested—that the reservation in question was not diminished or disestablished. 465 U. S., at 475–476.

members today constitute a small fraction of those now residing on the land, and that the area now includes a "vibrant city with expanding aerospace, healthcare, technology, manufacturing, and transportation sectors." Brief for Petitioner in *Carpenter* v. *Murphy*, O. T. 2018, No. 17–1107, p. 15. All this history, we are told, supplies "compelling" evidence about the lands in question.

Maybe so, but even taken on its own terms none of this evidence tells the story we are promised. Start with the State's argument about its longstanding practice of asserting jurisdiction over Native Americans. Oklahoma proceeds on the implicit premise that its historical practices are unlikely to have defied the mandates of the federal MCA. That premise, though, appears more than a little shaky. In conjunction with the MCA, §1151(a) not only sends to federal court certain major crimes committed by Indians on reservations. Two doors down, in §1151(c), the statute does the same for major crimes committed by Indians on "Indian allotments, the Indian titles of which have not been extinguished." Despite this direction, however, Oklahoma state courts erroneously entertained prosecutions for major crimes by Indians on Indian allotments for *decades*, until state courts finally disavowed the practice in 1989. See *State* v. *Klindt*, 782 P. 2d 401, 404 (Okla. Crim. App. 1989) (overruling *Ex parte Nowabbi*, 60 Okla. Crim. III, 61 P. 2d 1139 (1936)); see also *United States* v. *Sands*, 968 F. 2d 1058, 1062–1063 (CA10 1992). And if the State's prosecution practices disregarded §1151(c) for so long, it's unclear why we should take those same practices as a reliable guide to the meaning and application of §1151(a).

Things only get worse from there. Why did Oklahoma historically think it could try Native Americans for any crime committed on restricted allotments or anywhere else? Part of the explanation, Oklahoma tells us, is that it thought the eastern half of the State was always categorically exempt from the terms of the federal MCA. So

whether a crime was committed on a restricted allotment, a reservation, or land that wasn't Indian country at all, to Oklahoma it just didn't matter. In the State's view, when Congress adopted the Oklahoma Enabling Act that paved the way for its admission to the Union, it carved out a special exception to the MCA for the eastern half of the State where the Creek lands can be found. By Oklahoma's own admission, then, for decades its historical practices in the area in question didn't even *try* to conform to the MCA, all of which makes the State's past prosecutions a meaningless guide for determining what counted as Indian country. As it turns out, too, Oklahoma's claim to a special exemption was itself mistaken, yet one more error in historical practice that even the dissent does not attempt to defend. See Part V, *infra*.[10]

To be fair, Oklahoma is far from the only State that has overstepped its authority in Indian country. Perhaps often in good faith, perhaps sometimes not, others made similar mistakes in the past. But all that only underscores further the danger of relying on state practices to determine the meaning of the federal MCA. See, *e.g.*, *Negonsett*, 507 U. S., at 106–107 ("[I]n practice, Kansas had exercised jurisdiction over all offenses committed on Indian reservations involving Indians" (quoting memorandum from Secretary of the Interior, H. R. Rep. No. 1999, 76th Cong., 3d Sess., 4 (1940)); Scherer, Imperfect Victories, at 18 (describing "nationwide jurisdictional confusion" as a result of the MCA);

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[10] The dissent tries to avoid this inconvenient history by distinguishing fee allotments from reservations, noting that the two categories are legally distinct and geographically incommensurate. *Post,* at 27. But this misses the point: The *reason* that Oklahoma thought it could prosecute Indians for crimes on restricted allotments applied with equal force to reservations. And it hardly "stretches the imagination" to think that reason was wrong, *post*, at 28, when the dissent itself does not dispute our rejection of it in Part V.

Cohen §6.04(4)(a) ("Before 1942 the state of New York regularly exercised or claimed the right to exercise jurisdiction over the New York reservations, but a federal court decision in that year raised questions about the validity of state jurisdiction"); Brief for United States as *Amicus Curiae* in *Carpenter* v. *Murphy*, O. T. 2018, No. 17–1107, pp. 7a–8a (Letter from Secretary of the Interior, Mar. 27, 1963) (noting that many States have asserted criminal jurisdiction over Indians without an apparent basis in a federal law).[11]

Oklahoma next points to various statements during the allotment era which, it says, show that even the Creek understood their reservation was under threat. And there's no doubt about that. By 1893, the leadership of the Creek Nation saw what the federal government had in mind: "They [the federal government] do not deny any of our rights under treaty, but say they will go to the people themselves and confer with them and urge upon them the necessity of a change in their present condition, and upon their refusal will force a change upon them." P. Porter & A. McKellop, Printed Statement of Creek Delegates, reprinted in Creek Delegation Documents 8–9 (Feb. 9, 1893). Not a decade later, and as a result of these forced changes, the leadership recognized that "'[i]t would be difficult, if not impossible to successfully operate the Creek government now.'" App. to Brief for Respondent 8a (Message to Creek

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[11] Unable to answer Oklahoma's admitted error about the very federal criminal statute before us, the dissent travels far afield, pointing to the fact an Oklahoma court heard a civil case in 1915 about an inheritance—involving members of a different Tribe—as "evidence" Congress disestablished the Creek Reservation. See *post,* at 21 (citing *Palmer* v. *Cully*, 52 Okla. 454, 455–465, 153 P. 154, 155–157 (1915) (*per curiam*)). But even assuming that Oklahoma courts exercised civil jurisdiction over Creek members, too, the dissent never explains why this jurisdiction implies the Creek Reservation must have been disestablished. After all, everyone agrees that the Creeks were prohibited from having their own courts at the time. So it should be no surprise that some Creek might have resorted to state courts in hope of resolving their disputes.

National Council (May 7, 1901), reprinted in The Indian Journal (May 10, 1901)). Surely, too, the future looked even bleaker: "'The remnant of a government now accorded to us can be expected to be maintained only until all settlements of our landed and other interests growing out of treaty stipulations with the government of the United States shall have been settled.'" *Ibid.*

But note the nature of these statements. The Creek Nation recognized that the federal government *will* seek to get popular support or otherwise *would* force change. Likewise, the Tribe's government *would* continue for only so long. These were prophesies, and hardly groundbreaking ones at that. After all, the 1901 Creek Allotment Agreement explicitly said that the tribal government "shall not continue" past 1906. §46, 31 Stat. 872. So what might statements like these tell us that isn't already evident from the statutes themselves? Oklahoma doesn't suggest they shed light on the meaning of some disputed and ambiguous statutory direction. More nearly, the State seeks to render the Creek's fears self-fulfilling.[12]

We are also asked to consider commentary from those outside the Tribe. In particular, the dissent reports that the federal government "operated" on the "understanding" that the reservation was disestablished. *Post,* at 32. In support of its claim, the dissent highlights a 1941 statement from Felix Cohen. Then serving as an official at the Interior Department, Cohen opined that "'all offenses by or against Indians' in the former Indian Territory 'are subject to State

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[12]The dissent finds the statements of the Creek leadership so probative that it cites them not just as evidence about the meaning of treaties the Tribe signed but even as evidence about the meaning of general purpose laws the Creek had no hand in. See *post,* at 26 (citing Chief Porter's views on the legal effects of the Oklahoma Enabling Act). That is quite a stretch from using tribal statements as "historical evidence of 'the manner in which [treaties were] negotiated' with the . . . Tribe." *Parker*, 577 U. S., at ___ (slip op., at 9) (quoting *Solem* v. *Bartlett*, 465 U. S. 463, 471 (1984)).

laws.' " *Ibid.* (quoting App. to Supp. Reply Brief for Petitioner in *Carpenter* v. *Murphy*, O. T. 2018, No. 17–1107, p. 1a (Memorandum for Commissioner of Indian Affairs (July 11, 1941)). But that statement is incorrect. As we have just seen, Oklahoma's courts acknowledge that the State lacks jurisdiction over Indian crimes on Indian allotments. See *Klindt*, 782 P. 2d, at 403–404. And the dissent does not dispute that Oklahoma is without authority under the MCA to try Indians for crimes committed on restricted allotments and any reservation. All of which highlights the pitfalls of elevating commentary over the law.[13]

Finally, Oklahoma points to the speedy and persistent movement of white settlers onto Creek lands throughout the late 19th and early 20th centuries. But this history proves no more helpful in discerning statutory meaning. Maybe, as Oklahoma supposes, it suggests that some white settlers in good faith thought the Creek lands no longer constituted a reservation. But maybe, too, some didn't care and

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[13] Part of the reason for Cohen's error might be explained by a portion of the memorandum the dissent leaves unquoted. Cohen concluded that Oklahoma was free to try Indians anywhere in the State because, among other things, the Oklahoma Enabling Act "transfer[red] . . . jurisdiction from the Federal courts to the State courts upon the establishment of the State of Oklahoma." App. to Supp. Reply Brief for Petitioner in *Carpenter* v. *Murphy*, O. T. 2018, No. 17–1107, p. 1a (Memorandum for Commissioner of Indian Affairs (July 11, 1941)). Yet, as we explore below, the Oklahoma Enabling Act did *not* send cases covered by the federal MCA to state court. See Part V, *infra*. Other, contemporaneous Interior Department memoranda acknowledged that Oklahoma state courts had simply "assumed jurisdiction" over cases arising on restricted allotments without any clear authority in the Oklahoma Enabling Act or the MCA, and much the same appears to have occurred here. App. to Supp. Reply Brief for Respondent in *Carpenter* v. *Murphy*, O. T. 2018, No. 17–1107, p. 1a (Memorandum from N. Gray, Dept. of Interior, for Mr. Flanery (Aug. 12, 1942)). So rather than Oklahoma and the United States having a "shared understanding" that Congress had disestablished the Creek Reservation, *post*, at 27, it seems more accurate to say that for many years much uncertainty remained about whether the MCA applied in eastern Oklahoma.

others never paused to think about the question. Certain historians have argued, for example, that the loss of Creek land ownership was accelerated by the discovery of oil in the region during the period at issue here. A number of the federal officials charged with implementing the laws of Congress were apparently openly conflicted, holding shares or board positions in the very oil companies who sought to deprive Indians of their lands. A. Debo, And Still the Waters Run 86–87, 117–118 (1940). And for a time Oklahoma's courts appear to have entertained sham competency and guardianship proceedings that divested Tribe members of oil rich allotments. *Id.*, at 104–106, 233–234; Brief for Historians et al. as *Amici Curiae* 26–30. Whatever else might be said about the history and demographics placed before us, they hardly tell a story of unalloyed respect for tribal interests.[14]

In the end, only one message rings true. Even the carefully selected history Oklahoma and the dissent recite is not nearly as tidy as they suggest. It supplies us with little help

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[14] The dissent asks us to examine a hodge-podge of other, but no more compelling, material. For example, the dissent points to later statutes that do no more than confirm there are former reservations in the State of Oklahoma. *Post*, at 30–31. It cites legislative history to show that Congress had the Creek Nation—or, at least, its neighbors—in mind when it added these in 1988. *Post,* at 31, n. 7. The dissent cites a Senate Report from 1989 and post-1980 statements made by representatives of other tribes. *Post*, at 30, 32–33. It highlights three occasions on which this Court referred to something like a "former Creek Nation," though it neglects to add that in each the Court was referring to the loss of the Nation's communal fee title, not its sovereignty. *Grayson* v. *Harris*, 267 U. S. 352, 357 (1925); *Woodward* v. *DeGraffenreid*, 238 U. S. 284, 289–290 (1915); *Washington* v. *Miller*, 235 U. S. 422, 423–425 (1914). The dissent points as well to a single instance in which the Creek Nation disclaimed reservation boundaries for purposes of litigation in a lower court, *post,* at 32, but ignores that the Creek Nation has repeatedly filed briefs in this Court to the contrary. This is thin gruel to set against treaty promises enshrined in statutes.

in discerning the law's meaning and much potential for mischief. If anything, the persistent if unspoken message here seems to be that we should be taken by the "practical advantages" of ignoring the written law. How much easier it would be, after all, to let the State proceed as it has always assumed it might. But just imagine what it would mean to indulge that path. A State exercises jurisdiction over Native Americans with such persistence that the practice seems normal. Indian landowners lose their titles by fraud or otherwise in sufficient volume that no one remembers whose land it once was. All this continues for long enough that a reservation that was once beyond doubt becomes questionable, and then even farfetched. Sprinkle in a few predictions here, some contestable commentary there, and the job is done, a reservation is disestablished. None of these moves would be permitted in any other area of statutory interpretation, and there is no reason why they should be permitted here. That would be the rule of the strong, not the rule of law.

IV

Unable to show that Congress disestablished the Creek Reservation, Oklahoma next tries to turn the tables in a completely different way. Now, it contends, Congress never established a reservation in the first place. Over all the years, from the federal government's first guarantees of land and self-government in 1832 and through the litany of promises that followed, the Tribe never received a reservation. Instead, what the Tribe has had all this time qualifies only as a "dependent Indian community."

Even if we were to accept Oklahoma's bold feat of reclassification, however, it's hardly clear the State would win this case. "Reservation[s]" and "Indian allotments, the Indian titles to which have not been extinguished," qualify as Indian country under subsections (a) and (c) of §1151. But "dependent Indian communities" *also* qualify as Indian

country under subsection (b). So Oklahoma lacks jurisdiction to prosecute Mr. McGirt whether the Creek lands happen to fall in one category or another.

About this, Oklahoma is at least candid. It admits the entire point of its reclassification exercise is to avoid *Solem*'s rule that only Congress may disestablish a reservation. And to achieve that, the State has to persuade us not only that the Creek lands constitute a "dependent Indian community" rather than a reservation. It *also* has to convince us that we should announce a rule that dependent Indian community status can be lost more easily than reservation status, maybe even by the happenstance of shifting demographics.

To answer this argument, it's enough to address its first essential premise. Holding that the Creek never had a reservation would require us to stand willfully blind before a host of federal statutes. Perhaps that is why the Solicitor General, who supports Oklahoma's disestablishment argument, refuses to endorse this alternative effort. It also may be why Oklahoma introduced this argument for affirmance only for the first time in this Court. And it may be why the dissent makes no attempt to defend Oklahoma here. What are we to make of the federal government's repeated treaty promises that the land would be "solemnly guarantied to the Creek Indians," that it would be a "permanent home," "forever set apart," in which the Creek would be "secured in the unrestricted right of self-government"? What about Congress's repeated references to a "Creek reservation" in its statutes? No one doubts that this kind of language normally suffices to establish a federal reservation. So what could possibly make this case different?

Oklahoma's answer only gets more surprising. *The* reason that the Creek's lands are not a reservation, we're told, is that the Creek Nation originally held fee title. Recall that the Indian Removal Act authorized the President not only to "solemnly . . . assure the tribe . . . that the United States

will forever secure and guaranty to them . . . the country so exchanged with them," but also, "if they prefer it, . . . the United States will cause a patent or grant to be made and executed to them for the same." 4 Stat. 412. Recall that the Creek insisted on this additional protection when negotiating the Treaty of 1833, and in fact received a land patent pursuant to that treaty some 19 years later. In the eyes of Oklahoma, the Tribe's choice on this score was a fateful one. By asking for (and receiving) fee title to their lands, the Creek inadvertently made their tribal sovereignty easier to divest rather than harder.

The core of Oklahoma's argument is that a reservation must be land "reserved from sale." *Celestine*, 215 U. S., at 285. Often, that condition is satisfied when the federal government promises to hold aside a particular piece of federally owned land in trust for the benefit of the Tribe. And, admittedly, the Creek's arrangement was different, because the Tribe held "fee simple title, not the usual Indian right of occupancy." *United States* v. *Creek Nation*, 295 U. S. 103, 109 (1935). Still, as we explained in Part II, the land *was* reserved from sale in the very real sense that the government could not "give the tribal lands to others, or to appropriate them to its own purposes," without engaging in "'an act of confiscation.'" *Id.*, at 110.

It's hard to see, too, how any difference between these two arrangements might work to the detriment of the Tribe. Just as we have never insisted on any particular form of words when it comes to disestablishing a reservation, we have never done so when it comes to establishing one. See *Minnesota* v. *Hitchcock*, 185 U. S. 373, 390 (1902) ("[I]n order to create a reservation it is not necessary that there should be a formal cession or a formal act setting apart a particular tract. It is enough that from what has been there results a certain defined tract appropriated to certain purposes"). As long as 120 years ago, the federal court for the Indian Territory recognized all this and rightly rejected the

notion that fee title is somehow inherently incompatible with reservation status. *Maxey* v. *Wright*, 54 S. W. 807, 810 (Indian Terr. 1900).

By now, Oklahoma's next move will seem familiar. Seeking to sow doubt around express treaty promises, it cites some stray language from a statute that does not control here, a piece of congressional testimony there, and the scattered opinions of agency officials everywhere in between. See, *e.g.*, Act of July 31, 1882, ch. 360, 22 Stat. 179 (referring to Creek land as "Indian country" as opposed to an "Indian reservation"); S. Doc. No. 143, 59th Cong., 1st. Sess., 33 (1906) (Chief of Choctaw Nation—which had an arrangement similar to the Creek's—testified that both Tribes "object to being classified with the reservation Indians"); Dept. of Interior, Census Office, Report on Indians Taxed and Indians Not Taxed in the U. S. 284 (1894) (Creeks and neighboring Tribes were "not on the ordinary Indian reservation, but on lands patented to them by the United States"). Oklahoma stresses that this Court even once called the Creek lands a "dependent Indian community," though it used that phrase in passing and only to show that the Tribe's "property and affairs were subject to the control and management of that government"—a point that would also be true if the lands were a reservation. *Creek Nation*, 295 U. S., at 109. Unsurprisingly given the Creek Nation's nearly 200-year occupancy of these lands, both sides have turned up a few clues suggesting the label "reservation" either did or did not apply. One thing everyone can agree on is this history is long and messy.

But the most authoritative evidence of the Creek's relationship to the land lies not in these scattered references; it lies in the treaties and statutes that promised the land to the Tribe in the first place. And, if not for the Tribe's fee title to its land, no one would question that these treaties and statutes created a reservation. So the State's argument inescapably boils down to the untenable suggestion that,

when the federal government agreed to offer more protection for tribal lands, it really provided less. All this time, fee title was nothing more than another trap for the wary.

V

That leaves Oklahoma to attempt yet another argument in the alternative. We alluded to it earlier in Part III. Now, the State accepts for argument's sake that the Creek land is a reservation and thus "Indian country" for purposes of the Major Crimes Act. It accepts, too, that this would normally mean serious crimes by Indians on the Creek Reservation would have to be tried in federal court. But, the State tells us, none of that matters; everything the parties have briefed and argued so far is beside the point. It's all irrelevant because it turns out the MCA just doesn't apply to the eastern half of Oklahoma, and it never has. That federal law may apply to other States, even to the western half of Oklahoma itself. But eastern Oklahoma is and has always been exempt. So whether or not the Creek have a reservation, the State's historic practices have always been correct and it remains free to try individuals like Mr. McGirt in its own courts.

Notably, the dissent again declines to join Oklahoma in its latest twist. And, it turns out, for good reason. In support of its argument, Oklahoma points to statutory artifacts from its territorial history. The State of Oklahoma was formed from two territories: the Oklahoma Territory in the west and Indian Territory in the east. Originally, it seems criminal prosecutions in the Indian Territory were split between tribal and federal courts. See Act of May 2, 1890, §30, 26 Stat. 94. But, in 1897, Congress abolished that scheme, granting the U. S. Courts of the Indian Territory "exclusive jurisdiction" to try "all criminal causes for the punishment of any offense." Act of June 7, 1897, 30 Stat. 83. These federal territorial courts applied federal law and

state law borrowed from Arkansas "to all persons . . . irrespective of race." *Ibid.* A year later, Congress abolished tribal courts and transferred all pending criminal cases to U. S. courts of the Indian Territory. Curtis Act of 1898, §28, 30 Stat. 504–505. And, Oklahoma says, sending Indians to federal court and all others to state court would be inconsistent with this established and enlightened policy of applying the same law in the same courts to everyone.

Here again, however, arguments along these and similar lines have been "frequently raised" but rarely "accepted." *United States* v. *Sands*, 968 F. 2d 1058, 1061 (CA10 1992) (Kelly, J.). "The policy of leaving Indians free from state jurisdiction and control is deeply rooted in this Nation's history." *Rice* v. *Olson*, 324 U. S. 786, 789 (1945). Chief Justice Marshall, for example, held that Indian Tribes were "distinct political communities, having territorial boundaries, within which their authority is exclusive . . . which is not only acknowledged, but guarantied by the United States," a power dependent on and subject to no state authority. *Worcester* v. *Georgia*, 6 Pet. 515, 557 (1832); see also *McClanahan* v. *Arizona Tax Comm'n*, 411 U. S. 164, 168–169 (1973). And in many treaties, like those now before us, the federal government promised Indian Tribes the right to continue to govern themselves. For all these reasons, this Court has long "require[d] a clear expression of the intention of Congress" before the state or federal government may try Indians for conduct on their lands. *Ex parte Crow Dog*, 109 U. S. 556, 572 (1883).

Oklahoma cannot come close to satisfying this standard. In fact, the only law that speaks expressly here speaks *against* the State. When Oklahoma won statehood in 1907, the MCA applied immediately according to its plain terms. That statute, as phrased at the time, provided exclusive federal jurisdiction over qualifying crimes by Indians in "*any Indian reservation*" located within "the boundaries of *any*

State." Act of Mar. 3, 1885, ch. 341, §9, 23 Stat. 385 (emphasis added); see also 18 U. S. C. §1151 (defining "Indian country" even more broadly). By contrast, every one of the statutes the State directs us to merely discusses the assignment of cases among courts in the *Indian Territory*. They say nothing about the division of responsibilities between federal and state authorities after Oklahoma entered the Union. And however enlightened the State may think it was for territorial law to apply to all persons irrespective of race, some Tribe members may see things differently, given that the same policy entailed the forcible closure of tribal courts in defiance of treaty terms.

Left to hunt for some statute that might have rendered the MCA inapplicable in Oklahoma after statehood, the best the State can find is the Oklahoma Enabling Act. Congress adopted that law in preparation for Oklahoma's admission in 1907. Among its many provisions sorting out the details associated with Oklahoma's transition to statehood, the Enabling Act transferred all nonfederal cases pending in territorial courts to Oklahoma's new state courts. Act of June 16, 1906, §20, 34 Stat. 277; see also Act of Mar. 4, 1907, §3, 34 Stat. 1287 (clarifying treatment of cases to which United States was a party). The State says this transfer made its courts the inheritors of the federal territorial courts' sweeping authority to try Indians for crimes committed on reservations.

But, at best, this tells only half the story. The Enabling Act not only sent all nonfederal cases pending in territorial courts to state court. It *also* transferred pending cases that arose "under the Constitution, laws, or treaties of the United States" to federal district courts. §16, 34 Stat. 277. Pending criminal cases were thus transferred to federal court if the prosecution would have belonged there had the Territory been a State at the time of the crime. §1, 34 Stat. 1287 (amending the Enabling Act). Nor did the statute make any distinction between cases arising in the former

eastern (Indian) and western (Oklahoma) territories. So, simply put, the Enabling Act sent state-law cases to state court and federal-law cases to federal court. And serious crimes by Indians in Indian country were matters that arose under the federal MCA and thus properly belonged in federal court from day one, wherever they arose within the new State.

Maybe that's right, Oklahoma acknowledges, but that's not what happened. Instead, for many years the State continued to try Indians for crimes committed anywhere within its borders. But what can that tell us? The State identifies not a single ambiguous statutory term in the MCA that its actions might illuminate. And, as we have seen, its own courts have acknowledged that the State's historic practices deviated in meaningful ways from the MCA's terms. See *supra,* at 22–23. So, once more, it seems Oklahoma asks us to defer to its usual practices *instead of* federal law, something we will not and may never do.

That takes Oklahoma down to its last straw when it comes to the MCA. If Oklahoma lacks the jurisdiction to try Native Americans it has historically claimed, that means at the time of its entry into the Union *no one* had the power to try minor Indian-on-Indian crimes committed in Indian country. This much follows, Oklahoma reminds us, because the MCA provides federal jurisdiction only for major crimes, and no tribal forum existed to try lesser cases after Congress abolished the tribal courts in 1898. Curtis Act, §28, 30 Stat. 504–505. Whatever one thinks about the plausibility of other discontinuities between federal law and state practice, the State says, it is unthinkable that Congress would have allowed such a significant "jurisdictional gap" to open at the moment Oklahoma achieved statehood.

But what the State considers unthinkable turns out to be easily imagined. Jurisdictional gaps are hardly foreign to this area of the law. See, *e.g.*, *Duro* v. *Reina*, 495 U. S. 676,

704–706 (1990) (Brennan, J., dissenting). Many tribal courts across the country were absent or ineffective during the early part of the last century, yielding just the sort of gaps Oklahoma would have us believe impossible. Indeed, this might be why so many States joined Oklahoma in prosecuting Indians without proper jurisdiction. The judicial mind abhors a vacuum, and the temptation for state prosecutors to step into the void was surely strong. See *supra*, at 23–24.

With time, too, Congress has filled many of the gaps Oklahoma worries about. One way Congress has done so is by reauthorizing tribal courts to hear minor crimes in Indian country. Congress chose exactly this course for the Creeks and others in 1936. Act of June 26, 1936, §3, 49 Stat. 1967; see also *Hodel*, 851 F. 2d, at 1442–1446. Another option Congress has employed is to allow affected Indian tribes to consent to state criminal jurisdiction. 25 U. S. C. §§1321(a), 1326. Finally, Congress has sometimes expressly expanded state criminal jurisdiction in targeted bills addressing specific States. See, *e.g.*, 18 U. S. C. §3243 (creating jurisdiction for Kansas); Act of May 31, 1946, ch. 279, 60 Stat. 229 (same for a reservation in North Dakota); Act of June 30, 1948, ch. 759, 62 Stat. 1161 (same for certain reservations in Iowa); 18 U. S. C. §1162 (creating jurisdiction for six additional States). But Oklahoma doesn't claim to have complied with the requirements to assume jurisdiction voluntarily over Creek lands. Nor has Congress ever passed a law conferring jurisdiction on Oklahoma. As a result, the MCA applies to Oklahoma according to its usual terms: Only the federal government, not the State, may prosecute Indians for major crimes committed in Indian country.

VI

In the end, Oklahoma abandons any pretense of law and speaks openly about the potentially "transform[ative]" effects of a loss today. Brief for Respondent 43. Here, at

least, the State is finally rejoined by the dissent. If we dared to recognize that the Creek Reservation was never disestablished, Oklahoma and dissent warn, our holding might be used by other tribes to vindicate similar treaty promises. Ultimately, Oklahoma fears that perhaps as much as half its land and roughly 1.8 million of its residents could wind up within Indian country.

It's hard to know what to make of this self-defeating argument. Each tribe's treaties must be considered on their own terms, and the only question before us concerns the Creek. Of course, the Creek Reservation alone is hardly insignificant, taking in most of Tulsa and certain neighboring communities in Northeastern Oklahoma. But neither is it unheard of for significant non-Indian populations to live successfully in or near reservations today. See, *e.g.*, Brief for National Congress of American Indians Fund as *Amicus Curiae* 26–28 (describing success of Tacoma, Washington, and Mount Pleasant, Michigan); see also *Parker*, 577 U. S., at ___–___ (slip op., at 10–12) (holding Pender, Nebraska, to be within Indian country despite tribe's absence from the disputed territory for more than 120 years). Oklahoma replies that its situation is different because the affected population here is large and many of its residents will be surprised to find out they have been living in Indian country this whole time. But we imagine some members of the 1832 Creek Tribe would be just as surprised to find them there.

What are the consequences the State and dissent worry might follow from an adverse ruling anyway? Primarily, they argue that recognizing the continued existence of the Creek Reservation could unsettle an untold number of convictions and frustrate the State's ability to prosecute crimes in the future. But the MCA applies only to certain crimes committed in Indian country by Indian defendants. A neighboring statute provides that federal law applies to a broader range of crimes by or against Indians in Indian country. See 18 U. S. C. §1152. States are otherwise free

to apply their criminal laws in cases of non-Indian victims and defendants, including within Indian country. See *McBratney*, 104 U. S., at 624. And Oklahoma tells us that somewhere between 10% and 15% of its citizens identify as Native American. Given all this, even Oklahoma admits that the vast majority of its prosecutions will be unaffected whatever we decide today.

Still, Oklahoma and the dissent fear, "[t]housands" of Native Americans like Mr. McGirt "wait in the wings" to challenge the jurisdictional basis of their state-court convictions. Brief for Respondent 3. But this number is admittedly speculative, because many defendants may choose to finish their state sentences rather than risk reprosecution in federal court where sentences can be graver. Other defendants who do try to challenge their state convictions may face significant procedural obstacles, thanks to well-known state and federal limitations on post-conviction review in criminal proceedings.[15]

In any event, the magnitude of a legal wrong is no reason to perpetuate it. When Congress adopted the MCA, it broke many treaty promises that had once allowed tribes like the Creek to try their own members. But, in return, Congress allowed only the federal government, not the States, to try

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[15] For example, Oklahoma appears to apply a general rule that "issues that were not raised previously on direct appeal, but which could have been raised, are waived for further review." *Logan* v. *State*, 2013 OK CR 2, ¶ 1, 293 P. 3d 969, 973. Indeed, JUSTICE THOMAS contends that this state-law limitation on collateral review prevents us from considering even the case now before us. *Post,* at 2 (dissenting opinion). But while that state-law rule may often bar our way, it doesn't in this case. After noting a potential state-law obstacle, the Oklahoma Court of Criminal Appeals (OCCA) proceeded to address the merits of Mr. McGirt's federal MCA claim anyway. Because the OCCA's opinion "fairly appears to rest primarily on federal law or to be interwoven with federal law" and lacks any "plain statement" that it was relying on a state-law ground, we have jurisdiction to consider the federal-law question presented to us. See *Michigan* v. *Long*, 463 U. S. 1032, 1040–1041, 1044 (1983).

tribal members for major crimes. All our decision today does is vindicate that replacement promise. And if the threat of unsettling convictions cannot save a precedent of this Court, see *Ramos* v. *Louisiana*, 590 U. S. ___, ___–___ (2020) (plurality opinion) (slip op., at 23–26), it certainly cannot force us to ignore a statutory promise when no precedent stands before us at all.

What's more, a decision for *either* party today risks upsetting some convictions. Accepting the State's argument that the MCA never applied in Oklahoma would preserve the state-court convictions of people like Mr. McGirt, but simultaneously call into question every *federal* conviction obtained for crimes committed on trust lands and restricted Indian allotments since Oklahoma recognized its jurisdictional error more than 30 years ago. See *supra*, at 22. It's a consequence of their own arguments that Oklahoma and the dissent choose to ignore, but one which cannot help but illustrate the difficulty of trying to guess how a ruling one way or the other might affect past cases rather than simply proceeding to apply the law as written.

Looking to the future, Oklahoma warns of the burdens federal and tribal courts will experience with a wider jurisdiction and increased caseload. But, again, for every jurisdictional reaction there seems to be an opposite reaction: recognizing that cases like Mr. McGirt's belong in federal court simultaneously takes them out of state court. So while the federal prosecutors might be initially understaffed and Oklahoma prosecutors initially overstaffed, it doesn't take a lot of imagination to see how things could work out in the end.

Finally, the State worries that our decision will have significant consequences for civil and regulatory law. The only question before us, however, concerns the statutory definition of "Indian country" as it applies in federal criminal law under the MCA, and often nothing requires other civil stat-

utes or regulations to rely on definitions found in the criminal law. Of course, many federal civil laws and regulations do currently borrow from §1151 when defining the scope of Indian country. But it is far from obvious why this collateral drafting choice should be allowed to skew our interpretation of the MCA, or deny its promised benefits of a federal criminal forum to tribal members.

It isn't even clear what the real upshot of this borrowing into civil law may be. Oklahoma reports that recognizing the existence of the Creek Reservation for purposes of the MCA might potentially trigger a variety of federal civil statutes and rules, including ones making the region eligible for assistance with homeland security, 6 U. S. C. §§601, 606, historical preservation, 54 U. S. C. §302704, schools, 20 U. S. C. §1443, highways, 23 U. S. C. §120, roads, §202, primary care clinics, 25 U. S. C. §1616e–1, housing assistance, §4131, nutritional programs, 7 U. S. C. §§2012, 2013, disability programs, 20 U. S. C. §1411, and more. But what are we to make of this? Some may find developments like these unwelcome, but from what we are told others may celebrate them.

The dissent isn't so sanguine—it assures us, without further elaboration, that the consequences will be "drastic precisely because they depart from . . . more than a century [of] settled understanding." *Post,* at 37. The prediction is a familiar one. Thirty years ago the Solicitor General warned that "[l]aw enforcement would be rendered very difficult" and there would be "grave uncertainty regarding the application" of state law if courts departed from decades of "long-held understanding" and recognized that the federal MCA applies to restricted allotments in Oklahoma. Brief for United States as *Amicus Curiae* in *Oklahoma* v. *Brooks*, O.T. 1988, No. 88–1147, pp. 2, 9, 18, 19. Yet, during the intervening decades none of these predictions panned out, and that fact stands as a note of caution against too readily crediting identical warnings today.

More importantly, dire warnings are just that, and not a license for us to disregard the law. By suggesting that our interpretation of Acts of Congress adopted a century ago should be inflected based on the costs of enforcing them today, the dissent tips its hand. Yet again, the point of looking at subsequent developments seems not to be determining the meaning of the laws Congress wrote in 1901 or 1906, but emphasizing the costs of taking them at their word.

Still, we do not disregard the dissent's concern for reliance interests. It only seems to us that the concern is misplaced. Many other legal doctrines—procedural bars, res judicata, statutes of repose, and laches, to name a few—are designed to protect those who have reasonably labored under a mistaken understanding of the law. And it is precisely because those doctrines exist that we are "fre[e] to say what we know to be true . . . today, while leaving questions about . . . reliance interest[s] for later proceedings crafted to account for them." *Ramos*, 590 U. S., at ___ (plurality opinion) (slip op., at 24).

In reaching our conclusion about what the law demands of us today, we do not pretend to foretell the future and we proceed well aware of the potential for cost and conflict around jurisdictional boundaries, especially ones that have gone unappreciated for so long. But it is unclear why pessimism should rule the day. With the passage of time, Oklahoma and its Tribes have proven they can work successfully together as partners. Already, the State has negotiated hundreds of intergovernmental agreements with tribes, including many with the Creek. See Okla. Stat., Tit. 74, §1221 (2019 Cum. Supp.); Oklahoma Secretary of State, Tribal Compacts and Agreements, www.sos.ok.gov/tribal.aspx. These agreements relate to taxation, law enforcement, vehicle registration, hunting and fishing, and countless other fine regulatory questions. See Brief for Tom Cole et al. as *Amici Curiae* 13–19. No one before us claims that the spirit of good faith, "comity and

cooperative sovereignty" behind these agreements, *id.*, at 20, will be imperiled by an adverse decision for the State today any more than it might be by a favorable one.[16] And, of course, should agreement prove elusive, Congress remains free to supplement its statutory directions about the lands in question at any time. It has no shortage of tools at its disposal.

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The federal government promised the Creek a reservation in perpetuity. Over time, Congress has diminished that reservation. It has sometimes restricted and other times expanded the Tribe's authority. But Congress has never withdrawn the promised reservation. As a result, many of the arguments before us today follow a sadly familiar pattern. Yes, promises were made, but the price of keeping them has become too great, so now we should just cast a blind eye. We reject that thinking. If Congress wishes to withdraw its promises, it must say so. Unlawful acts, performed long enough and with sufficient vigor, are never enough to amend the law. To hold otherwise would be to elevate the most brazen and longstanding injustices over the law, both rewarding wrong and failing those in the right.

The judgment of the Court of Criminal Appeals of Oklahoma is

Reversed.

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[16] This sense of cooperation and a shared future is on display in this very case. The Creek Nation is supported by an array of leaders of other Tribes and the State of Oklahoma, many of whom had a role in negotiating exactly these agreements. See Brief for Tom Cole et al. as *Amici Curiae* 1 ("Amici are a former Governor, State Attorney General, cabinet members, and legislators of the State of Oklahoma, and two federally recognized Indian tribes, the Chickasaw Nation and Choctaw Nation of Oklahoma") (brief authored by Robert H. Henry, also a former State Attorney General and Chief Judge of the Tenth Circuit).

SUPREME COURT OF THE UNITED STATES

No. 18–9526

JIMCY MCGIRT, PETITIONER *v.* OKLAHOMA

ON WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF OKLAHOMA

[July 9, 2020]

CHIEF JUSTICE ROBERTS, with whom JUSTICE ALITO and JUSTICE KAVANAUGH join, and with whom JUSTICE THOMAS joins except as to footnote 9, dissenting.

In 1997, the State of Oklahoma convicted petitioner Jimcy McGirt of molesting, raping, and forcibly sodomizing a four-year-old girl, his wife's granddaughter. McGirt was sentenced to 1,000 years plus life in prison. Today, the Court holds that Oklahoma lacked jurisdiction to prosecute McGirt—on the improbable ground that, unbeknownst to anyone for the past century, a huge swathe of Oklahoma is actually a Creek Indian reservation, on which the State may not prosecute serious crimes committed by Indians like McGirt. Not only does the Court discover a Creek reservation that spans three million acres and includes most of the city of Tulsa, but the Court's reasoning portends that there are four more such reservations in Oklahoma. The rediscovered reservations encompass the entire eastern half of the State—19 million acres that are home to 1.8 million people, only 10%–15% of whom are Indians.

Across this vast area, the State's ability to prosecute serious crimes will be hobbled and decades of past convictions could well be thrown out. On top of that, the Court has profoundly destabilized the governance of eastern Oklahoma. The decision today creates significant uncertainty for the State's continuing authority over any area that touches Indian affairs, ranging from zoning and taxation to family and

environmental law.

None of this is warranted. What has gone unquestioned for a century remains true today: A huge portion of Oklahoma is not a Creek Indian reservation. Congress disestablished any reservation in a series of statutes leading up to Oklahoma statehood at the turn of the 19th century. The Court reaches the opposite conclusion only by disregarding the "well settled" approach required by our precedents. *Nebraska* v. *Parker*, 577 U. S. 481, ___ (2016) (slip op., at 5).

Under those precedents, we determine whether Congress intended to disestablish a reservation by examining the relevant Acts of Congress and "all the [surrounding] circumstances," including the "contemporaneous and subsequent understanding of the status of the reservation." *Id.*, at ___ (slip op., at 6) (internal quotation marks omitted). Yet the Court declines to consider such understandings here, preferring to examine only individual statutes in isolation.

Applying the broader inquiry our precedents require, a reservation did not exist when McGirt committed his crimes, so Oklahoma had jurisdiction to prosecute him. I respectfully dissent.

I

The Creek Nation once occupied what is now Alabama and Georgia. In 1832, the Creek were compelled to cede these lands to the United States in exchange for land in present day Oklahoma. The expanse set aside for the Creek and the other Indian nations that composed the "Five Civilized Tribes"—the Cherokees, Chickasaws, Choctaws, and Seminoles—became known as Indian Territory. See F. Cohen, Handbook of Federal Indian Law §4.07(1)(a), pp. 289–290 (N. Newton ed. 2012) (Cohen). Each of the Five Tribes formed a tripartite system of government. See *Marlin* v. *Lewallen*, 276 U. S. 58, 60 (1928). They "enact[ed] and execut[ed] their own laws," "punish[ed] their own criminals," and "rais[ed] and expend[ed] their own revenues." *Atlantic*

& Pacific R. Co. v. *Mingus*, 165 U. S. 413, 436 (1897).

The Five Tribes also enjoyed unique property rights. While many tribes held only a "right of occupancy" on lands owned by the United States, *United States* v. *Creek Nation*, 295 U. S. 103, 109 (1935), each of the Five Tribes possessed title to its lands in communal fee simple, meaning the lands were "considered the property of the whole." *E.g.*, Treaty with the Creeks, Arts. III and IV, Feb. 14, 1833, 7 Stat. 419; see *Marlin*, 276 U. S., at 60. Congress promised the Tribes that their lands would never be "included within, or annexed to, any Territory or State," see, *e.g.*, Treaty with Creeks and Seminoles, Art. IV, Aug. 7, 1856, 11 Stat. 700 (1856 Treaty), and that their new homes would be "forever secure," Indian Removal Act, §3, 4 Stat. 412; see also Treaty with the Creeks, Arts. I and XIV, Mar. 24, 1832, 7 Stat. 368.

Forever, it turns out, did not last very long, because the Civil War disrupted both relationships and borders. The Five Tribes, whose members collectively held at least 8,000 slaves, signed treaties of alliance with the Confederacy and contributed forces to fight alongside Rebel troops. See Gibson, Native Americans and the Civil War, 9 Am. Indian Q. 4, 385, 388–389, 393 (1985); Doran, Negro Slaves of the Five Civilized Tribes, 68 Annals Assn. Am. Geographers 335, 346–347, and Table 3 (1978); Cohen §4.07(1)(a), at 289. After the war, the United States and the Tribes formed new treaties, which required each Tribe to free its slaves and allow them to become tribal citizens. *E.g.*, Treaty with the Creek Indians, Art. II, June 14, 1866, 14 Stat. 786 (1866 Treaty); see Cohen §4.07(1)(a), at 289, and n. 9. The treaties also stated that the Tribes had "ignored their allegiance to the United States" and "unsettled the [existing] treaty relations," thereby rendering themselves "liable to forfeit" all "benefits and advantages enjoyed by them"—including their lands. *E.g.*, 1866 Treaty, Preamble, 14 Stat. 785. Due to "said liabilities," the treaties departed from prior promises and required each Tribe to give up the "west half" of its

"entire domain." *E.g.*, Preamble and Art. III, *id.*, at 785–786. These western lands became the Oklahoma Territory. As before, the new treaties promised that the reduced Indian Territory would be "forever set apart as a home" for the Tribes. *E.g.*, Art. III, *id.,* at 786.[1]

Again, however, it was not to last. In the wake of the war, a renewed "determination to thrust the nation westward" gripped the country. Cohen §1.04, at 71. Spurred by new railroads and protected by the repurposed Union Army, settlers rapidly transformed vast stretches of territorial wilderness into farmland and ranches. See *id.*, at 71–74. The Indian Territory was no exception. By 1900, over 300,000 settlers had poured in, outnumbering members of the Five Tribes by over 3 to 1. See H. R. Rep. No. 1762, 56th Cong., 1st Sess., 1 (1900). There to stay, the settlers founded "[f]lourishing towns" along the railway lines that crossed the territory. S. Rep. No. 377, 53d Cong., 2d Sess., 6 (1894).

Coexistence proved complicated. The new towns had no municipal governments or the things that come with them—laws, taxes, police, and the like. See H. R. Doc. No. 5, 54th Cong., 1st Sess., 89 (1895). No one had meaningful access to private property ownership, as the unique communal titles of the Five Tribes precluded ownership by Indians and non-Indians alike. Despite the millions of dollars that had been invested in the towns and farmlands, residents had no durable claims to their improvements. *Ibid.* Members of the Tribes were little better off, as the

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[1] I assume that the Creek Nation's territory constituted a "reservation" at this time. See *ante*, at 5–6. The State contends that no reservation existed in the first place because the territory instead constituted a "dependent Indian communit[y]." Brief for Respondent 8 (quoting 18 U. S. C. §1151(b)). The United States disagrees and states that defining the territory as a dependent Indian community could disrupt the application of various federal statutes. Tr. of Oral Arg. 79–80. I do not address this debate because, regardless, I conclude that any reservation was disestablished.

Tribes failed to hold the communal lands for the "equal benefit" of all members. *Woodward* v. *De Graffenried*, 238 U. S. 284, 297 (1915). Instead, a few "enterprising citizens" of the Tribes "appropriate[d] to their exclusive use almost the entire property of the Territory that could be rendered profitable." *Id.*, at 297, 299, n. 1 (internal quotation marks omitted). As a result, "the poorer class of Indians [were] unable to secure enough lands for houses and farms," and "the great body of the tribe derive[d] no more benefit from their title than the neighbors in Kansas, Arkansas, or Missouri." *Id.*, at 299–301, n. 1 (emphasis deleted; internal quotation marks omitted).

Attuned to these new realities, Congress decided that it could not maintain an Indian Territory predicated on "exclusion of the Indians from the whites." S. Rep. No. 377, at 6. Congress therefore set about transforming the Indian Territory into a State.

Congress began by establishing a uniform body of law applicable to all occupants of the territory, regardless of race. To apply these laws, Congress established the U. S. Courts for the Indian Territory. Next Congress systematically dismantled the tribal governments. It abolished tribal courts, hollowed out tribal lawmaking power, and stripped tribal taxing authority. Congress also eliminated the foundation of tribal sovereignty, extinguishing the Creek Nation's title to the lands. Finally, Congress made the tribe members citizens of the United States and incorporated them in the drafting and ratification of the constitution for their new State, Oklahoma.

In taking these transformative steps, Congress made no secret of its intentions. It created a commission tasked with extinguishing the Five Tribes' territory and, in one report after another, explained that it was creating a homogenous population led by a common government. That contemporaneous understanding was shared by the tribal leadership

and the State of Oklahoma. The tribal leadership acknowledged that its only remaining power was to parcel out the last of its land, and the State assumed jurisdiction over criminal cases that, if a reservation had continued to exist, would have belonged in federal court.

A century of practice confirms that the Five Tribes' prior domains were extinguished. The State has maintained unquestioned jurisdiction for more than 100 years. Tribe members make up less than 10%–15% of the population of their former domain, and until a few years ago the Creek Nation itself acknowledged that it no longer possessed the reservation the Court discovers today. This on-the-ground reality is enshrined throughout the U. S. Code, which repeatedly terms the Five Tribes' prior holdings the "former" Indian reservations in Oklahoma. As the Tribes, the State, and Congress have recognized from the outset, those "reservations were destroyed" when "Oklahoma entered the Union." S. Rep. No. 101–216, pt. 2, p. 47 (1989).

II

Much of this important context is missing from the Court's opinion, for the Court restricts itself to viewing each of the statutes enacted by Congress in a vacuum. That approach is wholly inconsistent with our precedents on reservation disestablishment, which require a highly contextual inquiry. Our "touchstone" is congressional "purpose" or "intent." *South Dakota* v. *Yankton Sioux Tribe*, 522 U. S. 329, 343 (1998). To "decipher Congress' intention" in this specialized area, we are instructed to consider three categories of evidence: the relevant Acts passed by Congress; the contemporaneous understanding of those Acts and the historical context surrounding their passage; and the subsequent understanding of the status of the reservation and the pattern of settlement there. *Solem* v. *Bartlett*, 465 U. S. 463, 470–472 (1984). The Court resists calling these "steps," be-

cause "the only 'step' proper for a court of law" is interpreting the laws enacted by Congress. *Ante*, at 17–18. Any label is fine with us. What matters is that these are categories of evidence that our precedents "direct[] us" to examine *in determining* whether the laws enacted by Congress disestablished a reservation. *Hagen* v. *Utah*, 510 U. S. 399, 410–411 (1994). Because those precedents are not followed by the Court today, it is necessary to describe several at length.[2]

In *Solem* v. *Bartlett*, 465 U. S. 463 (1984), a unanimous Court summarized the appropriate methodology. "Congress [must] clearly evince an intent to change boundaries before diminishment will be found." *Id.*, at 470 (internal quotation marks and alterations omitted). This inquiry first considers the "statutory language used to open the Indian lands," which is the "most probative evidence of congressional intent." *Ibid.* "Explicit reference to cession or other language evidencing the present and total surrender of all tribal interests strongly suggests that Congress meant to divest from the reservation all unallotted opened lands." *Ibid.* But "explicit language of cession and unconditional compensation are not prerequisites" for a finding of disestablishment. *Id.*, at 471.

Second, we consider "events surrounding the passage of

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[2] Our precedents have generally considered whether Congress disestablished or diminished a reservation by enacting "surplus land Acts" that opened land to non-Indian settlement. Here Congress did much more than that, as I will explain. Even so, there is broad agreement among the parties, the United States, the Creek Nation, and even the Court that our precedents on surplus land Acts provide the governing framework for this case, so I proceed on the same course. See Brief for Petitioner 1; Brief for Respondent 29, 35, 40; Brief for United States as *Amicus Curiae* 4–5; Brief for Muscogee (Creek) Nation as *Amicus Curiae* 1–2; *ante*, at 7–8, 18–19.

[an] Act—particularly the manner in which the transaction was negotiated with the tribes involved and the tenor of legislative Reports presented to Congress." *Ibid.* When such materials "unequivocally reveal a widely held, contemporaneous understanding that the affected reservation would shrink as a result of the proposed legislation," we will "infer that Congress shared the understanding that its action would diminish the reservation," even in the face of "statutory language that would otherwise suggest reservation boundaries remained unchanged." *Ibid.*

Third, to a "lesser extent," we examine "events that occurred after the passage of [an] Act to decipher Congress' intentions." *Ibid.* "Congress' own treatment of the affected areas, particularly in the years immediately following the opening, has some evidentiary value, as does the manner in which the Bureau of Indian Affairs and local judicial authorities dealt with [the areas]." *Ibid.* In addition, "we have recognized that who actually moved onto opened reservation lands is also relevant." *Ibid.* "Where non-Indian settlers flooded into the opened portion of a reservation and the area has long since lost its Indian character, we have acknowledged that *de facto*, if not *de jure*, diminishment may have occurred." *Ibid.* This "subsequent demographic history" provides an "additional clue as to what Congress expected would happen." *Id.*, at 471–472.

Fifteen years later, another unanimous Court described the same methodology more pithily in *South Dakota* v. *Yankton Sioux Tribe*, 522 U. S. 329 (1998). First, the Court reiterated that the "most probative evidence of diminishment is, of course, the statutory language." *Id.*, at 344 (internal quotation marks omitted). The Court continued that it would also consider, second, "the historical context surrounding the passage of the . . . Acts," and third, "the subsequent treatment of the area in question and the pattern of settlement there." *Ibid.* (quoting *Hagen*, 510 U. S., at 411).

The Court today treats these precedents as aging relics in need of "clarif[ication]." *Ante*, at 19. But these precedents have been clear enough for some time. Just a few Terms ago, the same inquiry was described as "well settled" by the unanimous Court in *Nebraska* v. *Parker*, 577 U. S. 481, ___ (2016) (slip op., at 5). First, the Court explained, "we start with the statutory text." *Ibid.* "Under our precedents," the Court continued, "we also 'examine all the circumstances surrounding the opening of a reservation.'" *Id.,* at ___ (slip op., at 6) (quoting *Hagen*, 510 U. S., at 412). Thus, second and third, we "look to any unequivocal evidence of the contemporaneous and subsequent understanding of the status of the reservation by members and nonmembers, as well as the United States and the State." 577 U. S., at ___ (slip op., at 6) (internal quotation marks omitted). These inquiries include, respectively, the "history surrounding the passage of the [relevant] Act" as well as the subsequent "demographic history" and "treatment" of the lands at issue. *Id.*, at ___, ___ (slip op., at 8, 10).

Today the Court does not even discuss the governing approach reiterated throughout these precedents. The Court briefly recites the general rule that disestablishment requires clear congressional "intent," *ante*, at 8, but the Court then declines to examine the categories of evidence that our precedents demand we consider. Instead, the Court argues at length that allotment alone is not enough to disestablish a reservation. *Ante*, at 8–12. Then the Court argues that the "many" "serious blows" dealt by Congress to tribal governance, and the creation of the new State of Oklahoma, are each insufficient for disestablishment. *Ante*, at 13–16. Then the Court emphasizes that "historical practices or current demographics" do not "by themselves" "suffice" to disestablish a reservation. *Ante*, at 17–18.

This is a school of red herrings. No one here contends that any individual congressional action or piece of evi-

dence, standing alone, disestablished the Creek reservation. Rather, Oklahoma contends that all of the relevant Acts of Congress together, viewed in light of contemporaneous and subsequent contextual evidence, demonstrate Congress's intent to disestablish the reservation. "[O]ur traditional approach . . . *requires* us" to determine Congress's intent by "examin[ing] *all* the circumstances surrounding the opening of a reservation." *Hagen*, 510 U. S., at 412 (emphasis added). Yet the Court refuses to confront the cumulative import of all of Congress's actions here.

The Court instead announces a new approach sharply restricting consideration of contemporaneous and subsequent evidence of congressional intent. The Court states that such "extratextual sources" may be considered in "only" one narrow circumstance: to help "'clear up'" ambiguity in a particular "statutory term or phrase." *Ante*, at 17–18, 20 (quoting *Milner* v. *Department of Navy*, 562 U. S. 562, 574 (2011), and citing *New Prime Inc.* v. *Oliveira*, 586 U. S. ___, ___ (2019) (slip op., at 6)).

But, if that is the right approach, what have we been doing all these years? Every single one of our disestablishment cases has considered extratextual sources, and in doing so, none has required the identification of ambiguity in a particular term. That is because, while it is well established that Congress's "intent" must be "clear," *ante,* at 20 (quoting *Yankton Sioux Tribe*, 522 U. S., at 343), in this area we have expressly held that the appropriate inquiry does not focus on the statutory text alone.

Today the Court suggests that only the text can satisfy the longstanding requirement that Congress "explicitly indicate[]" its intent. *Ante,* at 20 (quoting *Solem*, 465 U. S., at 470). The Court reiterates that a reservation persists unless Congress "said otherwise," *ante*, at 1; if Congress wishes to disestablish a reservation, "it must say so," with the right "language." *Ante*, at 8, 18; see *ante*, at 42 (same).

Our precedents disagree. They explain that disestablishment can occur "[e]ven in the absence of a clear expression of congressional purpose in the text of [the] Act." *Yankton Sioux Tribe*, 522 U. S., at 351. The "notion" that "express language in an Act is the *only* method by which congressional action may result in disestablishment" is "quite inconsistent" with our precedents. *Rosebud Sioux Tribe* v. *Kneip*, 430 U. S. 584, 586, 588, n. 4 (1977); see *Solem*, 465 U. S., at 471 (intent may be discerned from a "widely held, contemporaneous understanding," "notwithstanding the presence of statutory language that would otherwise suggest reservation boundaries remained unchanged"); see also *DeCoteau* v. *District County Court for Tenth Judicial Dist.*, 420 U. S. 425, 444 (1975); *Mattz* v. *Arnett*, 412 U. S. 481, 505 (1973).

These are not "stiche[d] together quotes" but rather plain language reflecting a consistent theme running through our precedents. *Ante*, at 20, n. 9. They make clear that the Court errs in focusing on whether "a statute" alone "required" disestablishment, *ante,* at 20; under these precedents, we cannot determine what Congress "required" without first considering evidence in addition to the relevant statutes. Oddly, the Court claims these precedents actually support its new approach because they "emphasize that '[t]he focus of our inquiry is congressional intent.'" *Ante,* at 20–21, n. 9 (quoting *Rosebud Sioux Tribe*, 430 U. S., at 588, n. 4, and citing *Yankton Sioux Tribe*, 522 U. S., at 343). But in this context that intent is determined by examining a broad array of evidence—"all the circumstances." *Parker*, 577 U. S., at ___ (slip op., at 6) (quoting *Hagen*, 510 U. S., at 412). Unless the Court is prepared to overrule these precedents, it should follow them.

The Court appears skeptical of these precedents, but does not address the compelling reasons they give for considering extratextual evidence. At the turn of the century, the possibility that a reservation might persist in the absence

of "tribal ownership" of the underlying lands was "unfamiliar," and the prevailing "assumption" was that "Indian reservations were a thing of the past." *Solem*, 465 U. S., at 468. Congress believed "to a man" that "within a short time" the "Indian tribes would enter traditional American society and the reservation system would cease to exist." *Ibid.* As a result, Congress—while intending disestablishment—did not always "detail" precise changes to reservation boundaries. *Ibid.* Recognizing this distinctive backdrop, our precedents determine Congress's intent by considering a broader variety of evidence than we might for more run-of-the-mill questions of statutory interpretation. See *id.*, at 468–469; *Parker*, 577 U. S., at ___ (slip op., at 6); *Yankton Sioux Tribe*, 522 U. S., at 343. See also Cohen §2.02(1), at 113 ("The theory and practice of interpretation in federal Indian law differs from that of other fields of law.").

The Court next claims that *Parker* "clarif[ied]" that evidence of the subsequent treatment of the disputed land by government officials "'has limited interpretive value.'" *Ante*, at 19 (quoting *Parker*, 577 U. S., at ___ (slip op., at 11)). But *Parker* held that the subsequent evidence *in that case* "ha[d] 'limited interpretive value,'" as in the case that *Parker* relied on. 577 U. S., at ___–___ (slip op., at 11–12) (quoting *Yankton Sioux Tribe*, 522 U. S., at 355). The adequacy of evidence in a particular case says nothing about whether our precedents require us to consider such evidence in others.[3]

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[3]The Court rejects this reading of *Parker* based on a quotation that ends with what sounds like a general principle that "[e]vidence of the subsequent treatment of the disputed land by Government officials likewise has 'limited interpretive value.'" *Ante*, at 19, n. 8 (quoting *Parker*, 577 U. S., at ___ (slip op., at 11)). But that sentence was actually the topic sentence of a new paragraph that addressed the *particular* evidence of subsequent treatment of the *particular* land by the *particular* government officials in that case. *Id.*, at ___–___ (slip op., at 11–12). It is clear

The Court finally resorts to torching strawmen. No one relying on our precedents contends that "practical advantages" require "ignoring the written law." *Ante*, at 27. No one claims a State has "authority to reduce federal reservations." *Ante*, at 7. No one says the role of courts is to "sav[e] the political branches" from "embarrassment." *Ibid.* No one argues that courts can "adjust[ ]" reservation borders. *Ibid.* Such notions have nothing to do with our precedents. What our precedents do provide is the settled approach for determining whether Congress disestablished a reservation, and the Court starkly departs from that approach here.

III

Applied properly, our precedents demonstrate that Congress disestablished any reservation possessed by the Creek Nation through a relentless series of statutes leading up to Oklahoma statehood.

A

The statutory texts are the "most probative evidence" of congressional intent. *Parker*, 577 U. S., at ___ (slip op., at 5) (quoting *Hagen*, 510 U. S., at 411). The Court appropriately examines the Original Creek Agreement of 1901 and a subsequent statute for language of disestablishment, such as "cession," "abolish[ing]" the reservation, "restor[ing]" land to the "public domain," or an "unconditional commitment" to "compensate" the Tribe. *Ante*, at 8–12 (internal quotation marks omitted). But that is only the beginning

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that *Parker* merely concluded that the evidence cited by the parties provided a "mixed record of subsequent treatment" that did not move the needle either way. *Ibid.* (internal quotation marks omitted). *Parker* did not silently overturn our precedents requiring us to consider—and accord "weight" to—subsequent evidence that plainly favors, or undermines, disestablishment. *Rosebud Sioux Tribe* v. *Kneip*, 430 U. S. 584, 604 (1977); see *supra,* at 6–9.

of the analysis; there is no "magic words" requirement for disestablishment, and each individual statute may not be considered in isolation. See *supra,* at 10–11; *Hagen*, 510 U. S., at 411, 415–416 (when two statutes "buil[d]" on one another in this area, "[both] statutes—as well as those that came in between—must therefore be read together"); see also *Rosebud Sioux Tribe*, 430 U. S., at 592 (recognizing that a statute "cannot, and should not, be read as if it were the first time Congress had addressed itself to" disestablishment when prior statutes also indicate congressional intent). In this area, "we are not free to say to Congress: 'We see what you are driving at, but you have not said it, and therefore we shall go on as before.'" *Id.*, at 597 (quoting *Johnson* v. *United States*, 163 F. 30, 32 (CA1 1908) (Holmes, J.)). Rather, we recognize that the language Congress uses to accomplish its objective is adapted to the circumstances it confronts.

For example, "cession" is generally what a tribe does when it conveys land to a fellow sovereign, such as the United States or another tribe. See *Mitchel* v. *United States*, 9 Pet. 711, 734 (1835); *e.g.*, 1856 Treaty, Art. I, 11 Stat. 699. But here, given that Congress sought direct allotment to tribe members in order to enable private ownership by both Indians and the 300,000 settlers in the territory, it would have made little sense to "cede" the lands to the United States or "restore" the lands to the "public domain," as Congress did on other occasions. So too with a "commitment" to "compensate" the Tribe. Rather than buying land from the Creek, Congress provided for allotment to tribe members who could then "sell their land to Indians and non-Indians alike." *Ante*, at 10; see *Hagen*, 510 U. S., at 412 (a "definite payment" is not required for disestablishment). That other allotment statutes have contained various "hallmarks" of disestablishment tells us little about Congress's intent here. Contra, *ante,* at 12–13, and n. 5. "[W]e have never required any particular form of words" to

disestablish a reservation. *Hagen*, 510 U. S., at 411. There are good reasons the statutes here do not include the language the Court looks for, and those reasons have nothing to do with a failure to disestablish the reservation. Respect for Congress's work requires us to look at what it actually did, not search in vain for what it might have done or did on other occasions.

What Congress actually did here was enact a series of statutes beginning in 1890 and culminating with Oklahoma statehood that (1) established a uniform legal system for Indians and non-Indians alike; (2) dismantled the Creek government; (3) extinguished the Creek Nation's title to the lands at issue; and (4) incorporated the Creek members into a new political community—the State of Oklahoma. These statutes evince Congress's intent to terminate the reservation and create a new State in its place.

First, Congress supplanted the Creek legal system with a legal code and court system that applied equally to Indians and non-Indians. In 1890, Congress subjected the Indian Territory to specified federal criminal laws. Act of May 2, 1890, §31, 26 Stat. 96. For offenses not covered by federal law, Congress did what it often did when establishing a new territorial government. It provided that the criminal laws from a neighboring State, here Arkansas, would apply. §33, *id.*, at 96–97. Seven years later, Congress provided that the laws of the United States and Arkansas "shall apply to *all* persons" in Indian Territory, "*irrespective of race*." Act of June 7, 1897 (1897 Act), 30 Stat. 83 (emphasis added). In the same Act, Congress conferred on the U. S. Courts for the Indian Territory "exclusive jurisdiction" over "all civil causes in law and equity" and "all criminal causes" for the punishment of offenses committed by "any person" in the Indian Territory. *Ibid.*

The following year, the 1898 Curtis Act "abolished" all tribal courts, prohibited all officers of such courts from ex-

ercising "any authority" to perform "any act" previously authorized by "any law," and transferred "all civil and criminal causes then pending" to the U. S. Courts for the Indian Territory. Act of June 27, 1898 (Curtis Act), §28, *id.,* at 504–505. In the same Act, Congress completed the shift to a uniform legal order by banning the enforcement of tribal law in the newly exclusive jurisdiction of the U. S. Courts. See §26, *id.*, at 504 ("[T]he laws of the various tribes or nations of Indians shall not be enforced at law or in equity by the courts of the United States in the Indian Territory."). Congress reiterated yet again in 1904 that Arkansas law "continued" to "embrace *all* persons and estates" in the territory—"whether Indian, freedmen, or otherwise." Act of Apr. 28, 1904, ch. 1824, §2, 33 Stat. 573 (emphasis added). In this way, Congress replaced tribal law with local law in matters at the core of tribal governance, such as inheritance and marital disputes. See, *e.g.*, *George* v. *Robb*, 4 Ind. T. 61, 64 S. W. 615, 615–616 (1901); *Colbert* v. *Fulton*, 74 Okla. 293, 157 P. 1151, 1152 (1916).

In addition, the Curtis Act established municipalities to govern both Indians and non-Indians. It authorized "any city or town" with at least 200 residents to incorporate. §14, 30 Stat. 499. The Act gave incorporated towns "all the powers" and "all the rights" of municipalities under Arkansas law. *Ibid.* "All male inhabitants," including Indians, were deemed qualified to vote in town elections. *Ibid.* And "all inhabitants"—"*without regard to race*"—were made subject to "all" town laws and were declared to possess "*equal* rights, privileges, and protection." *Id.*, at 499–500 (emphasis added). These changes reorganized the approximately 150 towns in the territory—including Tulsa, Muskogee, and 23 others within the Creek Nation's former territory—that were home to tens of thousands of people and nearly one third of the territory's population at the time, laying the foundation for the state governance that was to come. See H. R. Doc. No. 5, 57th Cong., 2d Sess., pt. 2, pp. 299–300,

Table 1 (1903); Depts. of Commerce and Labor, Bureau of Census, Population of Oklahoma and Indian Territory 1907, pp. 8, 30–33.

Second, Congress systematically dismantled the governmental authority of the Creek Nation, targeting all three branches. As noted, Congress dissolved the Tribe's judicial system. Congress also specified in the Original Creek Agreement that the Creek government would "not continue" past March 1906, essentially preserving it only as long as Congress thought necessary for the Tribe to wind up its affairs. §46, 31 Stat. 872. In the meantime, Congress radically curtailed tribal legislative authority, providing that no statute passed by the council of the Creek Nation affecting the Nation's lands, money, or property would be valid unless approved by the President of the United States. §42, *id.*, at 872. When 1906 came around, the Five Tribes Act provided for the "final disposition of the affairs of the Five Civilized Tribes." Act of Apr. 26, 1906, ch. 1876, 34 Stat. 137. Along with "abolish[ing]" all tribal taxes, the Act directed the Secretary of the Interior to assume control over the collection of the Nation's remaining revenues and to distribute them among tribe members on a per capita basis. §§11, 17, *id.*, at 141, 143–144. Thus, by the time Oklahoma became the 46th State in 1907, there was little left of the Creek Nation's authority: No tribal courts. No tribal law. No tribal fisc. And any lingering authority was further reduced in 1908, when Congress amended the Five Tribes Act to require tribal officers and members to surrender all remaining tribal property, money, and records. Act of May 27, 1908, §13, 35 Stat. 316.

The Court stresses that the Five Tribes Act separately stated that the Creek government was "continued" in "full force and effect for all purposes authorized by law." *Ante*, at 15 (quoting §28, 34 Stat. 148). By that point, however, such "authorized" purposes were nearly nonexistent, and the Act's statement is readily explained by the need to

maintain a tribal body to wrap up the distribution of Creek lands. Indeed, the Court does not cite any examples of the Creek Nation exercising significant government authority in the wake of the statutes discussed above. Instead, the Court alludes to subsequent changes in the 1920s to the general "federal outlook towards Native Americans," and it observes that in the 1930s Congress authorized the Creek Nation to reconstitute its tribal courts and adopt a constitution and bylaws. *Ante*, at 15. That, however, simply highlights the drastic extent to which Congress erased the Nation's authority at the turn of the century.

Third, Congress destroyed the foundation of sovereignty by stripping the Creek Nation of its territory. The communal title held by the Creek Nation, which "did not recognize private property in land," "presented a serious obstacle to the creation of [a] State." *Choate* v. *Trapp*, 224 U. S. 665, 667 (1912). Well aware of this impediment, Congress established the Dawes Commission and directed it to negotiate with the Five Tribes for "the extinguishment of the national or tribal title to any lands" within the Indian Territory. Act of Mar. 3, 1893, §16, 27 Stat. 645. That extinguishment could be accomplished through "cession" of the tribal lands to the United States, "allotment" of the lands among the Indians, or any other agreed upon method. *Ibid.* The Commission initially sought cession, but ultimately sought to extinguish the title through allotment. See *ante*, at 9.

In the Original Creek Agreement of 1901, Congress did just that. The agreement provided that "*[a]ll lands* belonging to the Creek tribe," except town sites and lands reserved for schools and public buildings, "shall be allotted among the citizens of the tribe." §§2, 3, 31 Stat. 862 (emphasis added). Town sites, rather than being allotted, were made available for purchase by the non-Indians residing there. §§11–16, *id.*, at 866–867. Unclaimed lots were to be sold at public auction, with the proceeds divvied up among the

Creeks. §§11, 14, *id.*, at 866. The agreement required that the deeds for the allotments and town site purchases convey "all right, title, and interest of the Creek Nation and of all other [Creek] citizens," and that the deeds be executed by the leader of the Creek Nation (the "principal chief"). §23, *id.*, at 867–868. The conveyances were then approved by the Secretary of the Interior, who in turn "relinquish[ed] to the grantee . . . all the right, title, and interest of the United States" in the land. *Id.*, at 868. In this way, Congress provided for the complete termination of the Creek Nation's interest in the lands, as well as the interests of individual Creek members apart from their personal allotments. Indeed, the language Congress used in the Original Creek Agreement resembles what the Court regards as model disestablishment language. See *ante*, at 8, 10 (looking for language evincing "the present and total surrender of all tribal interests in the affected lands" (internal quotation marks omitted)). And, making even more clear its intent to place Indian-held land under the same laws as all other property, Congress subsequently eliminated restrictions on the alienation of allotments, freeing tribe members "to sell their land to Indians and non-Indians alike." *Ante*, at 10.

In addition, while the Original Creek Agreement did not allot lands reserved for schools and tribal buildings, the Creek Nation's interest in those lands was subsequently terminated by the Five Tribes Act. That Act directed the Secretary of the Interior to take possession of—and sell off—"all" tribal buildings and underlying lands, whether used for "governmental" or "other tribal purposes." §15, 34 Stat. 143. The Secretary was also ordered to assume control of all tribal schools and the underlying property until the federal or state governments established a public school system. See §10, *id.*, at 140–141.

These statutes evince a clear intent to leave the Creek Nation with no communally held land and no meaningful governing authority to exercise over the newly distributed

parcels. Contrary to the Court's portrayal, this is not a scenario in which Congress allowed a tribe to "continue to exercise governmental functions over land" that it "no longer own[ed] communally." *Ante*, at 11. From top to bottom, these statutes, which divested the Tribes and the United States of their interests while displacing tribal governance, "strongly suggest[] that Congress meant to divest" the lands of reservation status. *Solem*, 465 U. S., at 470.

Finally, having stripped the Creek Nation of its laws, its powers of self-governance, and its land, Congress incorporated the Nation's members into a new political community. Congress made "every Indian" in the Oklahoma territory a citizen of the United States in 1901—decades before conferring citizenship on all native born Indians elsewhere in the country. Act of Mar. 3, 1901, ch. 868, 31 Stat. 1447. In the Oklahoma Enabling Act of 1906—the gateway to statehood—Congress confirmed that members of the Five Tribes would participate in equal measure alongside non-Indians in the choice regarding statehood. The Act gave Indians the right to vote on delegates to a constitutional convention and ultimately on the state constitution that the delegates proposed. §§2, 4, 34 Stat. 268, 271. Fifteen members of the Five Tribes were elected as convention delegates, many of them served on significant committees, and a member of the Chickasaw Nation even served as president of the convention. See Brief for Seventeen Oklahoma District Attorneys et al. as *Amici Curiae* 9–13.

The Enabling Act also ensured that Indians and non-Indians would be subject to uniform laws and courts. It replaced Arkansas law, which had applied to all persons "irrespective of race," 1897 Act, 30 Stat. 83, with the laws of the adjacent Oklahoma Territory until the new state legislature provided otherwise. Enabling Act §§2, 13, 21, 34 Stat. 268–269, 275, 277–278; see *Jefferson* v. *Fink*, 247 U. S. 288, 294 (1918). All of the pending cases in the territorial courts arising under federal law were transferred to

the newly created U. S. District Courts of Oklahoma. See §16, 34 Stat. 276. Pending cases not involving federal law, including those that involved Indians on Indian land and had arisen under Arkansas law, were transferred to the new Oklahoma state courts. §§16, 17, 20, *id.*, at 276–277. To dispel any potential confusion about the distribution of criminal cases, Congress amended the Enabling Act the following year, clarifying that all cases for crimes that would have fallen under federal jurisdiction had they been committed in a State would be transferred to the U. S. District Courts. Act of Mar. 4, 1907, §1, *id.*, at 1286–1287. All other pending criminal cases would be "prosecuted to a final determination in the State courts of Oklahoma." §3, *id.*, at 1287. As for civil cases, the new state courts were immediately empowered to resolve even disputes that previously lay at the core of tribal self-governance. *E.g.*, *Palmer* v. *Cully*, 52 Okla. 454, 463–469, 153 P. 154, 157–158 (1915) (*per curiam*) (marital dispute).[4]

In sum, in statute after statute, Congress made abundantly clear its intent to disestablish the Creek territory. The Court, for purposes of the disestablishment question before us, defines the Creek territory as "lands that would lie outside both the legal jurisdiction and geographic boundaries of any State" and on which a tribe was "assured a right to self-government." *Ante*, at 6. That territory was eliminated. By establishing uniform laws for Indians and non-

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[4]The Court, citing *United States* v. *Sandoval*, 231 U. S. 28, 47–48 (1913), argues that including a tribe within a new State is not necessarily incompatible with the continuing existence of a reservation. *Ante*, at 15–16, n. 6. But the tribe in *Sandoval*, the Pueblo Indians of New Mexico, retained a rare communal title to their lands—which Congress explicitly extinguished here. 231 U. S., at 47. More fundamentally, the Court's argument suffers from the same flaw that runs through its entire approach, which maintains that each of Congress's actions alone would not be enough for disestablishment but never confronts the import of all of them.

Indians alike in the new State of Oklahoma, Congress brought Creek members and the land on which they resided under state jurisdiction. By stripping the Creek Nation of its courts, lawmaking authority, and taxing power, Congress dismantled the tribal government. By extinguishing the Nation's title, Congress erased the geographic boundaries that once defined Creek territory. And, by conferring citizenship on tribe members and giving them a vote in the formation of the State, Congress incorporated them into a new political community. "Under any definition," that was disestablishment. *Ibid.*

In the face of all this, the Court claims that recognizing Congress's intent would permit disestablishment in the absence of "a statute requir[ing] that result." *Ante*, at 20. Hardly. The numerous statutes discussed above demonstrate Congress's plain intent to terminate the reservation. The Court resists the cumulative force of these statutes by attacking each in isolation, first asking whether allotment alone disestablished the reservation, then whether restricting tribal governance was sufficient, and so on. But the Court does not consider the full picture of what Congress accomplished. Far from justifying its blinkered approach, the Court repeatedly tells the reader to wait until the "*next* section" of the opinion—where the Court will again nitpick discrete aspects of Congress's disestablishment effort while ignoring the full picture our precedents require us to honor. *Ante*, at 12–13, n. 5, 17, n. 7; see *supra,* at 11, 14.

The Court also hypothesizes that Congress may have taken significant steps toward disestablishment but ultimately could not "complete[]" it; perhaps Congress just couldn't "muster the will" to finish the job. *Ante*, at 8, 15. The Court suggests that Congress sought to "tiptoe to the edge of disestablishment," fearing the "embarrassment of disestablishing a reservation" but hoping that judges would "deliver the final push." *Ante*, at 7. This is fantasy. The congressional Acts detailed above do not evince any unease

about extinguishing the Creek domain, or any shortage of "will." Quite the opposite. Through an open and concerted effort, Congress did what it set out to do: transform a reservation into a State. "Mustering the broad social consensus required to pass new legislation is a deliberately hard business," as the Court reminds us. *Ibid.* Congress did that hard work here, enacting not one but a steady progression of major statutes. The Court today does not give effect to the cumulative significance of Congress's actions, because Congress did not use explicit words of the sort the Court insists upon. But Congress had no reason to suppose that such words would be required of it, and this Court has held that they were not. See *Hagen*, 510 U. S., at 411–412; *Yankton Sioux Tribe*, 522 U. S., at 351; *Solem*, 465 U. S., at 471.

B

Under our precedents, we next consider the contemporaneous understanding of the statutes enacted by Congress and the subsequent treatment of the lands at issue. The Court, however, declines to consider such evidence because, in the Court's view, the statutes clearly do not disestablish any reservation, and there is no "ambiguity" to "clear up." *Ante*, at 20 (internal quotation marks omitted). That is not the approach demanded by our precedent, *supra*, at 10–13, and, in any event, the Court's argument fails on its own terms here. I find it hard to see how anyone can come away from the statutory texts detailed above with *certainty* that Congress had no intent to disestablish the territorial reservation. At the very least, the statutes leave some ambiguity, and thus "extratextual sources" ought to be consulted. *Ante*, at 20.

Turning to such sources, our precedents direct us to "examine all the circumstances" surrounding Congress's actions. *Parker*, 577 U. S., at ___ (slip op., at 6) (quoting *Hagen*, 510 U. S., at 412). This includes evidence of the

"contemporaneous understanding" of the status of the reservation and the "history surrounding the passage" of the relevant Acts. *Parker*, 577 U. S., at ___ (slip op., at 8) (internal quotation marks omitted); see *Yankton Sioux Tribe*, 522 U. S., at 351–354; *Solem*, 465 U. S., at 471. The available evidence overwhelmingly confirms that Congress eliminated any Creek reservation. That was the purpose identified by Congress, the Dawes Commission, and the Creek Nation itself. And that was the understanding demonstrated by the actions of Oklahoma, the United States, and the Creek.

According to reports published by Congress leading up to Oklahoma statehood, the Five Tribes had failed to hold the lands for the equal benefit of all Indians, and the tribal governments were ill equipped to handle the largescale settlement of non-Indians in the territories. See *supra*, at 4–5; *Woodward*, 238 U. S., at 296–297. The Senate Select Committee on the Five Tribes explained that it was "imperative[ ]" to "establish[ ] a government over [non-Indians] and Indians" in the territory "in accordance with the principles of our constitution and laws." S. Rep. No. 377, at 12–13. On the eve of the Original Creek Agreement, the House Committee on Indian Affairs emphasized that "[t]he independent self-government of the Five Tribes ha[d] practically ceased," "[t]he policy of the Government to abolish classes in Indian Territory and make a homogeneous population [wa]s being rapidly carried out," and all Indians "should at once be put upon a level and equal footing with the great population with whom they [were] intermingled." H. R. Rep. No. 1188, 56th Cong., 1st Sess., 1 (1900).

The Dawes Commission understood Congress's intent in the same way. The Commission explained that the "object of Congress from the beginning has been the dissolution of the tribal governments, the extinguishment of the communal or tribal title to the land, the vesting of possession and title in severalty among the citizens of the Tribes, and the

assimilation of the peoples and institutions of this Territory to our prevailing American standard." H. R. Doc. No. 5, 58th Cong., 2d Sess., pt. 2, p. 5 (1903). Accordingly, the Commission's aim—"in all [its] endeavors"—was a "uniformity of political institutions to lay the foundation for an ultimate common government." H. R. Doc. No. 5, 56th Cong., 2d Sess., 163 (1900).

The Creek shared the same understanding. In 1893, the year Congress formed the Dawes Commission, the Creek delegation to Washington recognized that Congress's "unwavering aim" was to "'wipe out the line of political distinction between an Indian citizen and other citizens of the Republic'" so that the Tribe could be "'absorbed and become a part of the United States.'" P. Porter & A. McKellop, Printed Statement of Creek Delegates, reprinted in Creek Delegation Documents 8–9 (Feb. 9, 1893) (quoting Senate Committee Report); see also S. Doc. No. 111, 54th Cong., 2d Sess., 5, 8 (1897) (resolution of the Creek Nation "recogniz[ing]" that Congress proposed to "disintegrat[e] the land of our people" and "transform[]" "our domestic dependent states" "into a State of the Union").

Particularly probative is the understanding of Pleasant Porter, the principal Chief of the Creek Nation. He described Congress's decisions to the Creek people and legislature in messages published in territorial newspapers during the run-up to statehood. Following the extinguishment of the Nation's title, dissolution of tribal courts, and curtailment of lawmaking authority, he told his people that "[i]t would be difficult, if not impossible to successfully operate the Creek government now." App. to Brief for Respondent 8a (Message to Creek National Council (May 7, 1901), reprinted in The Indian Journal (May 10, 1901)). The "remnant of a government" had been reduced to a land office for finalizing the distribution of allotments and would be "maintained only until" the Tribe's "landed and other interests . . . have been settled." App. to Brief for Respondent

8a. He reiterated this understanding following the Five Tribes Act of 1906, which stated that the tribal government would "continue[] in full force and effect for all purposes authorized by law." §28, 34 Stat. 148. While the Court believes that meant Congress decided against disestablishing the reservation, see *ante*, at 14–15, Chief Porter saw things differently. From his vantage point as the contemporaneous leader of the government at issue, Congress had temporarily continued the tribal government but left it with only "limited and circumscribed" authority: The council could "pass[ ] resolutions respecting our wishes" regarding the property "now in the process of distribution," but the council no longer had any authority to "mak[e] laws for our government." App. to Brief for Respondent 14a (Message to Creek National Council (Oct. 18, 1906), reprinted in The New State Tribune (Oct. 18, 1906)). Apart from distributing the Nation's property, Chief Porter maintained that "all powers over the governing even of our landed property will cease" once the new state government was established. App. to Brief for Respondent 15a; see also S. Rep. No. 5013, 59th Cong., 2d Sess., pt. 1, p. 885 (1907) (Choctaw governor mourning that his "only" remaining authority was "to sign deeds").

The Creek remained of that view after Oklahoma was officially made a State through the Enabling Act. At that point, the new principal Chief confirmed that it was "utterly impossible" to resume "our old tribal government." App. to Brief for Respondent 16a–17a (Address by Moty Tiger to Creek National Council (Oct. 8, 1908), reprinted in The Indian Journal (Oct. 9, 1908)). And any "appeal to the government at Washington to alter its purpose to wipe out all tribal government among the five civilized tribes" would "be to no purpose." App. to Brief for Respondent 16a. "[C]ontributions" for such efforts would be "just that much money thrown away," and "all attorneys at Washington or else-

where who encourage and receive any part of such contributions do it knowing that they can give no return or service for same and that they take such money fraudulently and dishonestly." *Id.*, at 17a.[5]

In addition to their words, the contemporaneous actions of Oklahoma, the Creek, and the United States in criminal matters confirm their shared understanding that Congress did not intend a reservation to persist. Had the land been a reservation, the federal government—not the new State—would have had jurisdiction over serious crimes committed by Indians under the Major Crimes Act of 1885. See §9, 23 Stat. 385. Yet, at statehood, Oklahoma immediately began prosecuting serious crimes committed by Indians in the new state courts, and the federal government immediately ceased prosecuting such crimes in federal court. At argument, McGirt's counsel acknowledged that he could not cite a single example of federal prosecutions for such crimes. Tr. of Oral Arg. 17–18. Rather, the record demonstrates that case after case was transferred to state court or filed there outright by Oklahoma after 1907—without objection by anyone. See, *e.g.*, *Bigfeather* v. *State*, 7 Okla. Crim. 364, 123 P. 1026 (1912) (manslaughter); *Rollen* v. *State*, 7 Okla. Crim. 673, 125 P. 1087 (1912) (assault with intent to kill); *Jones* v. *State*, 3 Okla. Crim. 593, 107 P. 738 (1910) (murder); see also Brief for Petitioner in *Carpenter* v. *Murphy*, O. T. 2018, No. 17–1107, pp. 40–41 (collecting more cases).

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[5] The Court discounts the views of the principal chiefs as mere predictions about what Congress "*would*" do, *ante,* at 25, but the Court ignores statements made after statehood, describing what Congress *did* do. The Court also asserts that the chiefs' views cannot serve as "evidence" of the "meaning" of laws enacted by Congress. *Ante*, at 25, n. 12. That is inconsistent with our precedent, which specifically instructs us to determine Congress's intent by considering the "understanding of the status of the reservation by members" of the affected tribe. *Parker*, 577 U. S., at ___ (slip op., at 6). The contemporaneous understanding of the leaders of the tribe is highly probative.

These prosecutions were lawful, the Oklahoma Supreme Court recognized at the time, because Congress had not intended to "except out of [Oklahoma] an Indian reservation" upon its admission as a State. *Higgins* v. *Brown*, 20 Okla. 355, 419, 94 P. 703, 730 (1908).

Instead of explaining how everyone at the time somehow missed that a reservation still existed, the Court resorts to misdirection. It observes that Oklahoma state courts have held that they erroneously entertained prosecutions for crimes committed by Indians on the small number of remaining restricted allotments and tribal trust lands from the 1930s until 1989. But this Court has not addressed that issue, and regardless, it would not tell us whether the State properly prosecuted major crimes committed by Indians on the lands at issue here—the unrestricted fee lands that make up more than 95% of the Creek Nation's former territory. Perhaps most telling is that the State's jurisdiction over crimes on Indian allotments was hotly contested from an early date, whereas nobody raised objections based on a surviving reservation. See, *e.g.*, *Ex parte Nowabbi*, 60 Okla. Crim. 111, 61 P. 2d 1139 (1936), overruled by *State* v. *Klindt*, 782 P. 2d 401, 404 (Okla. Crim. App. 1989); see also *ante*, at 21 ("no court" suggested the "possibility" that "the Creek lands really were part of a reservation" until 2017).[6]

Lacking any other arguments, the Court suspects uniform lawlessness: The State must have "overstepped its authority" in prosecuting thousands of cases for over a century. *Ante*, at 23. Perhaps, the Court suggests, the State

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[6]The Court claims that the Oklahoma courts' reasons for treating restricted allotments as Indian country must apply with "equal force" to the unrestricted fee lands at issue here, but the Court ultimately admits the two types of land are "legally distinct." *Ante*, at 23, n. 10. And any misstep with regard to the small number of restricted allotments hardly means the Oklahoma courts made the far more extraordinary mistake of failing to notice that the Five Tribes' reservations—encompassing 19 million acres—continued to exist.

lacked "good faith." *Ibid.* In the Court's telling, the federal government acquiesced in this extraordinary alleged power grab, abdicating its responsibilities over the purported reservation. And, all the while, the state and federal courts turned a blind eye.

But we normally presume that government officials exercise their duties in accordance with the law. Certainly the presumption may be strained from time to time in this area, but not so much as to justify the Court's speculations, which posit that government officials at every level either conspired to violate the law or uniformly misunderstood the fundamental structure of their society and government. Whatever the imperfections of our forebears, neither option seems tenable. And it is downright inconceivable that this could occur without prompting objections—from anyone, including from the Five Tribes themselves. Indians frequently asserted their rights during this period. The cases above, for example, involve criminal appeals brought by Indians, and Indians raised numerous objections to land graft in the former Territory. See Brief for Historians et al. as *Amici Curiae* 28–31. Yet, according to the extensive record compiled over several years for this case and a similar case, *Sharp* v. *Murphy*, *post*, p. ___ (*per curiam*), Indians and their counsel did not raise a single objection to state prosecutions on the theory that the lands at issue were still a reservation. It stretches the imagination to suggest they just missed it.

C

Finally, consider "the subsequent treatment of the area in question and the pattern of settlement there." *Yankton Sioux Tribe*, 522 U. S., at 344. This evidence includes the "subsequent understanding of the status of the reservation by members and nonmembers as well as the United States and the [relevant] State," and the "subsequent demographic history" of the area. *Parker*, 577 U. S., at ___, ___ (slip op.,

at 6, 10); see *Solem*, 465 U. S., at 471. Each of the indicia from our precedents—subsequent treatment by Congress, the State's unquestioned exercise of jurisdiction, and demographic evidence—confirms that the Creek reservation did not survive statehood.

First, "Congress' own treatment of the affected areas" strongly supports disestablishment. *Id.*, at 471. After statehood, Congress enacted several statutes progressively eliminating restrictions on the alienation and taxation of Creek allotments, and Congress subjected even restricted lands to state jurisdiction. Since Congress had already destroyed nearly all tribal authority, these statutes rendered Creek parcels little different from other plots of land in the State. See Act of May 27, 1908, 35 Stat. 312; Act of June 14, 1918, 40 Stat. 606; Act of Apr. 10, 1926, 44 Stat. 239. This is not a scenario where Congress merely opened land for "purchase . . . by non-Indians" while allowing the Tribe to "continue to exercise governmental functions over [the] land," *ante*, at 11, and n. 3; rather, Congress eliminated both restrictions on the lands here and the Creek Nation's authority over them. Such developments would be surprising if Congress intended for all of the former Indian Territory to be reservation land insulated from state jurisdiction in significant ways. The simpler and more likely explanation is that they reflect Congress's understanding through the years that "all Indian reservations as such have ceased to exist" in Oklahoma, S. Rep. No. 1232, 74th Cong., 1st Sess., 6 (1935), and that "Indian reservations [in the Indian Territory] were destroyed" when "Oklahoma entered the union," S. Rep. No. 101–216, p. 47 (1989).

That understanding is now woven throughout the U. S. Code, which applies numerous statutes to the land here by extending them to the "*former* reservation[s]" "in Oklahoma"—underscoring that no reservation exists today. 25 U. S. C. §2719(a)(2)(A)(i) (emphasis added) (Indian Gaming

Regulatory Act); see Brief for United States as *Amicus Curiae* 23; 23 U. S. C. §202(b)(1)(B)(v) (road grants; "former Indian reservations in the State of Oklahoma"); 25 U. S. C. §1452(d) (Indian Financing Act; "former Indian reservations in Oklahoma"); §2020(d) (education grants; "former Indian reservations in Oklahoma"); §3103(12) (National Indian Forest Resources Management Act; "former Indian reservations in Oklahoma"); 29 U. S. C. §741(d) (American Indian Vocational Rehabilitation Services Act; "former Indian reservations in Oklahoma"); 33 U. S. C. §1377(c)(3)(B) (waste treatment grants; "former Indian reservations in Oklahoma"); 42 U. S. C. §5318(n)(2) (urban development grants; "former Indian reservations in Oklahoma").[7]

Second, consider the State's "exercis[e] [of] unquestioned jurisdiction over the disputed area since the passage of" the Enabling Act, which deserves "weight" as "an indication of the intended purpose of the Act." *Rosebud Sioux Tribe*, 430 U. S., at 599, n. 20, 604. As discussed above, for 113 years, Oklahoma has asserted jurisdiction over the former Indian

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[7] The Court suggests that these statutes only show that there are some "former reservations" in Oklahoma, not that the Five Tribes' former domains are necessarily among them. *Ante*, at 27, n. 14. History says otherwise. For example, the Five Tribes actively lobbied for inclusion of this language in the Indian Gaming Regulatory Act. See Hearing on S. 902 et al. before the Senate Select Committee on Indian Affairs, 99th Cong., 2d Sess., 299–300 (1986). They observed that the term "reservation," as originally defined, did not pertain to the "eastern Oklahoma tribes, including the Five Civilized Tribes." *Ibid.* (statement of Charles Blackwell, representative of the Chickasaw Nation of Oklahoma). Accordingly, they "recommend[ed] inclu[ding] . . . the wording 'or in the case of Oklahoma tribes, their *former* jurisdictional and/or reservation boundaries in Oklahoma.'" *Id.*, at 300 (emphasis added). The National Indian Gaming Association, which proposed the language on which the final act was ultimately modeled, made the same point, observing that in Oklahoma "reservation boundaries have been extinguished for most purposes" so the statute should refer to "former reservation[s] in Oklahoma." *Id.*, at 312 (Memorandum from the National Indian Gaming Assn. to the Senate Select Committee on Indian Affairs (June 17, 1986)).

Territory on the understanding that it is not a reservation, without any objection by the Five Tribes until recently (or by McGirt for the first 20 years after his convictions). See Brief for Respondent 4, 40. The same goes for major cities in Oklahoma. Tulsa, for example, has exercised jurisdiction over both Indians and non-Indians for more than a century on the understanding that it is not a reservation. See Brief for City of Tulsa as *Amicus Curiae* 27–28.

All the while, the federal government has operated on the same understanding. Brief for United States as *Amicus Curiae* 24. No less than Felix Cohen, whose authoritative treatise the Court repeatedly cites, agreed while serving as Acting Solicitor of the Interior in 1941 that "all offenses by or against Indians" in the former Indian Territory "are subject to State laws." App. to Supp. Reply Brief for Petitioner in *Carpenter* v. *Murphy*, O. T. 2018, No. 17–1107, p. 1a (Memorandum for Commissioner of Indian Affairs (July 11, 1941)). In the view of the Department of the Interior, such state jurisdiction was appropriate because the reservations in the Territory "lost their character as Indian country" by the time Oklahoma became a State. App. to Brief for United States as *Amicus Curiae* 4a (Letter from O. Chapman, Assistant Secretary of the Interior, to the Attorney General (Aug. 17, 1942)); see also *supra,* at 28, n. 6.

Indeed, far from disputing Oklahoma's jurisdiction, the Five Tribes themselves have repeatedly and emphatically agreed that no reservation exists. After statehood, tribal leaders and members frequently informed Congress that "there are no reservations in Oklahoma." App. to Brief for Respondent 19a (Testimony of Hon. Bill Anoatubby, Governor, Chickasaw Nation, Hearings before the Subcommittee on Indian, Insular and Alaska Native Affairs of the House Committee on Natural Resources (Feb. 24, 2016)).[8] They

[8] See App. to Brief for Respondent 18a–19a (excerpting various statements before Congress, including: "[w]e are not a reservation tribe"

took the same position before federal courts. Before this litigation started, the Creek Nation represented to the Tenth Circuit that there is only "'checkerboard' Indian country within its *former* reservation boundaries." Reply Brief in No. 09–5123, p. 5 (emphasis added). And the Nation never once contended in this Court that a sprawling reservation still existed in the more than a century that preceded the present disputes.

Like the Creek, this Court has repeatedly described the area in question as the "former" lands of the Creek Nation. See *Grayson* v. *Harris*, 267 U. S. 352, 353 (1925) (lands "lying within the former Creek Nation"); *Woodward*, 238 U. S., at 285 (lands "formerly part of the domain of the Creek Nation"); *Washington* v. *Miller*, 235 U. S. 422, 423 (1914) (lands "within what until recently was the Creek Nation"). Yet today the Court concludes that the lands have been a Creek reservation all along—contrary to the position shared for the past century by this Court, the United States, Oklahoma, and the Creek Nation itself.

Under our precedent, Oklahoma's unquestioned, century-long exercise of jurisdiction supports the conclusion that no reservation persisted past statehood. See *Yankton Sioux Tribe*, 522 U. S., at 357; *Hagen*, 510 U. S., at 421; *Rosebud Sioux Tribe*, 430 U. S., at 604–605. "Since state jurisdiction over the area within a reservation's boundaries is quite limited, the fact that neither Congress nor the Department of Indian Affairs has sought to exercise its authority over this area, or to challenge the State's exercise of authority is a

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(Principal Cherokee Chief, 1982), "Oklahoma, . . . of course, is not a reservation State" (Chickasaw Governor, 1988), "Oklahoma is not [a reservation State]" and "[w]e have no surface reservations in Oklahoma" (Chickasaw advisor, 2011), as well as references to the boundaries and lands of "former reservation[s]" (Chickasaw nominee for Assistant Secretary of Indian Affairs, 2012; Inter-Tribal Council of the Five Civilized Tribes, 2016)).

factor entitled to weight as part of the 'jurisdictional history.'" *Id.*, at 603–604 (citations omitted).

Third, consider the "subsequent demographic history" of the lands at issue, which provides an "'additional clue'" as to the meaning of Congress's actions. *Parker*, 577 U. S., at ___ (slip op., at 10) (quoting *Solem*, 465 U. S., at 472). Continuing from statehood to the present, the population of the lands has remained approximately 85%–90% non-Indian. See Brief for Respondent 43; *Murphy* v. *Royal*, 875 F. 3d 896, 965 (CA10 2017). "[T]hose demographics signify a diminished reservation." *Yankton Sioux Tribe*, 522 U. S., at 357. The Court questions whether the consideration of demographic history is appropriate, *ante*, at 18–19, 27, but we have determined that it is a "*necessary* expedient." *Solem*, 465 U. S., at 472, and n. 13 (emphasis added); see *Parker*, 577 U. S., at ___ (slip op., at 10). And for good reason. Our precedents recognize that disestablishment cases call for a wider variety of tools than more workaday questions of statutory interpretation. *Supra*, at 12. In addition, the use of demographic data addresses the practical concern that "[w]hen an area is predominately populated by non-Indians with only a few surviving pockets of Indian allotments, finding that the land remains Indian country seriously burdens the administration of state and local governments." *Solem*, 465 U. S., at 471–472, n. 12.

Here those burdens—the product of a century of settled understanding—are extraordinary. Most immediately, the Court's decision draws into question thousands of convictions obtained by the State for crimes involving Indian defendants or Indian victims across several decades. This includes convictions for serious crimes such as murder, rape, kidnapping, and maiming. Such convictions are now subject to jurisdictional challenges, leading to the potential release of numerous individuals found guilty under state law

of the most grievous offenses.[9] Although the federal government may be able to reprosecute some of these crimes, it may lack the resources to reprosecute all of them, and the odds of convicting again are hampered by the passage of time, stale evidence, fading memories, and dead witnesses. See Brief for United States as *Amicus Curiae* 37–39. No matter, the court says, these concerns are speculative because "many defendants may choose to finish their state sentences rather than risk reprosecution in federal court." *Ante*, at 38. Certainly defendants like McGirt—convicted of serious crimes and sentenced to 1,000 years plus life in prison—will not adopt a strategy of running out the clock on their state sentences. At the end of the day, there is no escaping that today's decision will undermine numerous convictions obtained by the State, as well as the State's ability to prosecute serious crimes committed in the future.

Not to worry, the Court says, only about 10%–15% of Oklahoma citizens are Indian, so the "majority" of prosecutions will be unaffected. *Ibid.* But the share of serious crimes committed by 10%–15% of the 1.8 million people in eastern Oklahoma, or of the 400,000 people in Tulsa, is no small number.

Beyond the criminal law, the decision may destabilize the governance of vast swathes of Oklahoma. The Court, despite briefly suggesting that its decision concerns only a narrow question of criminal law, ultimately acknowledges that "many" federal laws, triggering a variety of rules, spring into effect when land is declared a reservation. *Ante*, at 39–40.

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[9] The Court suggests that "well-known" "procedural obstacles" could prevent challenges to state convictions. *Ante*, at 38. But, under Oklahoma law, it appears that there may be little bar to state habeas relief because "issues of subject matter jurisdiction are never waived and can therefore be raised on a collateral appeal." *Murphy* v. *Royal*, 875 F. 3d 896, 907, n. 5 (CA10 2017) (quoting *Wallace* v. *State*, 935 P. 2d 366, 372 (Okla. Crim. App. 1997)).

State and tribal authority are also transformed. As to the State, its authority is clouded in significant respects when land is designated a reservation. Under our precedents, for example, state regulation of even non-Indians is preempted if it runs afoul of federal Indian policy and tribal sovereignty based on a nebulous balancing test. This test lacks any "rigid rule"; it instead calls for a "particularized inquiry into the nature of the state, federal, and tribal interests at stake," contemplated in light of the "broad policies that underlie" relevant treaties and statutes and "notions of sovereignty that have developed from historical traditions of tribal independence." *White Mountain Apache Tribe* v. *Bracker*, 448 U. S. 136, 142, 144–145 (1980). This test mires state efforts to regulate on reservation lands in significant uncertainty, guaranteeing that many efforts will be deemed permissible only after extensive litigation, if at all.[10]

In addition to undermining state authority, reservation status adds an additional, complicated layer of governance over the massive territory here, conferring on tribal government power over numerous areas of life—including powers over non-Indian citizens and businesses. Under our precedents, tribes may regulate non-Indian conduct on reservation land, so long as the conduct stems from a "consensual

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[10] See, *e.g.*, *White Mountain Apache Tribe*, 448 U. S., at 148–151 (barring State from imposing motor carrier license tax and fuel use taxes on non-Indian logging companies that harvested timber on a reservation); *Warren Trading Post Co.* v. *Arizona Tax Comm'n*, 380 U. S. 685, 690–692 (1965) (barring State from taxing income earned by a non-Indian who operated a trading post on a reservation); *New Mexico* v. *Mescalero Apache Tribe*, 462 U. S. 324, 325 (1983) (barring State from regulating hunting and fishing by non-Indians on a reservation); see also *Brendale* v. *Confederated Tribes and Bands of Yakima Nation*, 492 U. S. 408, 448 (1989) (opinion of Stevens, J.) (arguing that it is "impossible to articulate precise rules that will govern whenever a tribe asserts that a land use approved by a county board is pre-empted by federal law").

relationship[] with the tribe or its members" or directly affects "the political integrity, the economic security, or the health or welfare of the tribe." *Montana* v. *United States*, 450 U. S. 544, 565–566 (1981); see Cohen §6.02(2)(a), at 506–507. Tribes may also impose certain taxes on non-Indians on reservation land, *s*ee *Kerr-McGee Corp.* v. *Navajo Tribe*, 471 U. S. 195, 198 (1985), and in this litigation, the Creek Nation contends that it retains the power to tax nonmembers doing business within its borders. Brief for Muscogee (Creek) Nation as *Amicus Curiae* 18, n. 6. No small power, given that those borders now embrace three million acres, the city of Tulsa, and hundreds of thousands of Oklahoma citizens. Recognizing the significant "potential for cost and conflict" caused by its decision, the Court insists any problems can be ameliorated if the citizens of Oklahoma just keep up the "spirit" of cooperation behind existing intergovernmental agreements between Oklahoma and the Five Tribes. *Ante*, at 41. But those agreements are small potatoes compared to what will be necessary to address the disruption inflicted by today's decision.

The Court responds to these and other concerns with the truism that significant consequences are no "license for us to disregard the law." *Ibid.* Of course not. But when those consequences are drastic precisely because they depart from how the law has been applied for more than a century—a settled understanding that our precedents demand we consider—they are reason to think the Court may have taken a wrong turn in its analysis.

* * *

As the Creek, the State of Oklahoma, the United States, and our judicial predecessors have long agreed, Congress disestablished any Creek reservation more than 100 years ago. Oklahoma therefore had jurisdiction to prosecute McGirt. I respectfully dissent.

SUPREME COURT OF THE UNITED STATES

No. 18–9526

JIMCY MCGIRT, PETITIONER *v.* OKLAHOMA

ON WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF OKLAHOMA

[July 9, 2020]

JUSTICE THOMAS, dissenting.

I agree with THE CHIEF JUSTICE that the former Creek Nation Reservation was disestablished at statehood and Oklahoma therefore has jurisdiction to prosecute petitioner for sexually assaulting his wife's granddaughter. *Ante*, at 1–2 (dissenting opinion). I write separately to note an additional defect in the Court's decision: It reverses a state-court judgment that it has no jurisdiction to review. "[W]e have long recognized that 'where the judgment of a state court rests upon two grounds, one of which is federal and the other non-federal in character, our jurisdiction fails if the non-federal ground is independent of the federal ground and adequate to support the judgment.'" *Michigan* v. *Long*, 463 U. S. 1032, 1038, n. 4 (1983) (quoting *Fox Film Corp.* v. *Muller*, 296 U. S. 207, 210 (1935)). Under this well-settled rule, we lack jurisdiction to review the Oklahoma Court of Criminal Appeals' decision, because it rests on an adequate and independent state ground.

In his application for state postconviction relief, petitioner claimed that Oklahoma lacked jurisdiction to prosecute him because his crime was committed on Creek Nation land and thus was subject to the exclusive jurisdiction of the Federal Government under the Major Crimes Act, 18 U. S. C. §1153. In support of his argument, petitioner cited the Tenth's Circuit's decision in *Murphy* v. *Royal*, 875 F. 3d 896 (2017).

The Oklahoma Court of Criminal Appeals concluded that petitioner's claim was procedurally barred under state law because it was "not raised previously on direct appeal" and thus was "waived for further review." 2018 OK CR 1057 ¶2, ___ P. 3d ___, ___ (citing Okla. Stat., Tit. 22, §1086 (2011)). The court found no grounds for excusing this default, explaining that "[p]etitioner [had] not established any sufficient reason why his current grounds for relief were not previously raised." ___ P. 3d, at ___. This state procedural bar was applied independent of any federal law, and it is adequate to support the decision below. We therefore lack jurisdiction to disturb the state court's judgment.

There are two possible arguments in favor of jurisdiction, neither of which hold water. First, one might claim that the state procedural bar is not an "adequate" ground for decision in this case. In *Murphy*, the Tenth Circuit suggested that Oklahoma law permits jurisdictional challenges to be raised for the first time on collateral review. 875 F. 3d, at 907, n. 5 (citing *Wallace* v. *State*, 1997 OK CR 18, 935 P. 2d 366). But the Oklahoma Court of Criminal Appeals did not even hint at such grounds for excusing petitioner's default here. More importantly, however, we may not go beyond "the four corners of the opinion" and delve into background principles of Oklahoma law to determine the adequacy of the independent state ground. *Long*, 463 U. S., at 1040. This Court put an end to that approach in *Long*, noting that "[t]he process of examining state law is unsatisfactory because it requires us to interpret state laws with which we are generally unfamiliar, and which often, as in this case, have not been discussed at length by the parties." *Id.*, at 1039. Moreover, such second-guessing disrespects "the independence of state courts," *id.*, at 1040, and the State itself, *Coleman* v. *Thompson*, 501 U. S. 722, 738–739 (1991).

Second, one might argue, as the Court does, that we have jurisdiction because the decision below rests on federal, not state, grounds. See *ante,* at 38, n. 15. It is true that the

Oklahoma Court of Criminal Appeals briefly recited the procedural history of *Murphy* and recognized that the Tenth Circuit's decision—which we granted certiorari to review—is not yet final. But contrary to the Court's assertion that brief discussion of federal case law did not come close to "address[ing] the merits of [petitioner's] federal [Major Crimes Act] claim." *Ante*, at 38, n. 15. The state court did not analyze the relevant statutory text or this Court's decisions in *Solem* v. *Bartlett*, 465 U. S. 463 (1984), and *Nebraska* v. *Parker*, 577 U. S. 481 (2016). It reads far too much into the opinion to claim that the court's brief reference to the Tenth Circuit's decision in *Murphy* transformed the state court's decision into one that "fairly appear[s] to rest primarily on federal law or to be interwoven with federal law," *Long*, *supra*, at 1040–1041; see also *ante,* at 38, n. 15. Nothing in the court's opinion suggests that its judgment was at all based on federal law. Thus, even if we were to set aside the fact that the state court "clearly and expressly state[d] that [its decision] was based on state procedural grounds," we could not presume jurisdiction here. *Coleman*, *supra*, at 735–736 (internal quotation marks omitted).

The Court might think that, in the grand scheme of things, this jurisdictional defect is fairly insignificant. After all, we were bound to resolve this federal question sooner or later. See *Royal* v. *Murphy*, 584 U. S. ___ (2018). But our desire to decisively "settle [important disputes] for the sake of convenience and efficiency" must yield to the "overriding and time-honored concern about keeping the Judiciary's power within its proper constitutional sphere." *Hollingsworth* v. *Perry*, 570 U. S. 693, 704–705 (2013) (internal quotation marks omitted). Because the Oklahoma court's "judgment does not depend upon the decision of any federal question[,] we have no power to disturb it." *Enterprise Irrigation Dist.* v. *Farmers Mut. Canal Co.*, 243 U. S. 157, 164 (1917).

I agree with THE CHIEF JUSTICE that the Court misapplies our precedents in granting petitioner relief. *Ante*, at 6–38 (dissenting opinion). But in doing so, the Court also overrides Oklahoma's statutory procedural bar, upsetting a violent sex offender's conviction without the power to do so. The State of Oklahoma deserves more respect under our Constitution's federal system. Therefore, I respectfully dissent.