



# The Society of Indian Psychologists

## Executive Board

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Response and Recommendations Upon Review of the

## *Recent Decision to Set Aside the 2015 ICWA ruling by the 8th Circuit Court of Appeals*

Respectfully Submitted on behalf of the Society of Indian Psychologists,

this day of November 6, 2018

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The United States District Court for the Northern District of Texas recently published a decision declaring the Indian Child Welfare Act (ICWA) unconstitutional. The Court concluded that: (a) ICWA is race-based; (b) ICWA violates the non-delegation doctrine; (c) ICWA imposes federal standards and jurisdiction over the states' authority and proceedings; (d) the Bureau of Indian Affairs (BIA) also lacks certain authority; and (e) that Congress was without authority to enact the ICWA (Pierson, 2018). Yet, we, the Society of Indian Psychologists, many of whom are enrolled members of different tribal nations, who are also law-abiding citizens of these United States of America, and most significantly, who are scholars, professionals, and experts in the mental and behavioral health and wellbeing of American Indians and other Native peoples, respectfully ask why this egregious decision is being imposed upon those who have already suffered so much under the will and aegis of the United States Government?

### **The Historical Relationship Between Native Americans and the U.S. Government**

The value of history lies in the knowledge it can impart. Yet, the power of history is wielded through mankind's individual and collectivistic ability to learn from it. However, when it comes to Native Americans (American Indians, Alaska Natives, and Native Hawaiians), the authoritative and hegemonic tendencies that began with the first colonists and settlers persist



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even today, and furthermore, have been abusive and exploitative of this great nation's First Peoples. Thus, we ask, has nothing been learned by those who colonized us or who settled our homelands? Has the U.S. Government, in its infinite wisdom, failed to grasp how much harm its legal policies and overreach are causing to Native people and their communities? Despite the centuries that have transpired since colonists first came to the shores of our great lands, Native peoples continue to encounter and experience blatant elements of discrimination and marginalization.

For generations now, Native people have fought to be self-determining. Sovereignty notwithstanding, Native people have continually endured grievous burdens such as the involuntary loss of their children to boarding schools, forced relocation (Weaver, 1998), and now, with the unconscionable overturning of the ICWA (Pierson, 2018), all at the whim of the U.S. government. Native languages have been outlawed, discouraged, and some have even been lost altogether. Even religious freedoms, a right bestowed by the first amendment of the U.S. Constitution, have at times been challenged for Native Americans. The Declaration of Independence declares the unalienable right of Life, Liberty, and the pursuit of happiness for all U. S. Citizens, yet Native people have endured sundown laws, Jim Crow laws, and paternalistic dominion over the natural resources found on reservation lands (e.g.: water, petroleum, precious metals, uranium, etc.). The ramifications of such longstanding and inequitable policies have ultimately contributed to a pervasive state of poverty, socioeconomic decline, and the most severe health disparities of any ethnic minority in the U.S. (Gross, 2003; Walters et al., 2011)



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Moreover, these conditions are not merely a result of unintended consequences. Rather, they evidence a pattern of deep-rooted, systemic malice toward Native Americans.

Prior to the instatement of the ICWA in 1978, the custodial rights of Native parents had constantly been challenged because Native people were deemed unfit to care for their own children (Unger, 1977). Supported by the doctrine of *parens patriae*, which grants the inherent power and authority of the state to protect persons who are legally unable to act on their own behalf, authorities encouraged the transracial adoption of American Indian and Alaska Native children away from family, community, and tribe, resulting in the disproportionate placement of Native children to non-Native homes (Unger, 1977). The passage of the ICWA was a significant turning point in policy to legislation that was focused on preserving tribal families and communities (Gross, 2003; Mannes, 1995). The ICWA gave tribal courts supreme jurisdiction with respect to the placement of Native children domiciled within the boundaries of tribal lands. The tribes also had legal jurisdiction of Native children living outside reservation boundaries, but the statutory language of *parens patriae* emboldened legal challenges because U.S. authorities continue to impute Native people as being unfit to care for their own children, thereby stigmatizing all Native parents (Renick, 2018).

## Harms Inflicted

The health inequities experienced by Native Americans can largely be attributed to their history. Social suffering, inflicted over centuries, has resulted in a disproportionate burden of ill health and psychological issues such as those related to identity; a lack of coping skills in contending with trauma, and vicarious trauma, to name a few (Adelson, 2005). Recent research



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has also posited Intergenerational/Historical Trauma as the overarching narrative linking the myriad of bio-psycho-social harms as interrelated and putting them into a context that focuses on lived experience, generation upon generation (Walters et al., 2011). Native people also experience very high and disproportionate suicide rates due to difficulty in coping with despair. Today, many Native people are unaware of the history and how negative government policies have impacted their lives. Instead, they are commonly pathologized as having deficit or defect. In fact, the majority of Native people are young and under 30. Yet, for American Indian/Alaska Natives (AI/AN) within this age range, the suicide completion rates are more than triple (35.7%) that of Whites (11.1%) under 30 (Leavitt et al., 2018).

Although less prone to suicide, AI/AN women are far more likely to experience interpersonal violence (including sexual assault) than any other ethnic group in the United States (Rosay and National Institute of Justice (U.S.), 2016). Yet, distressingly, there is not even a centralized database to track the many Missing and Murdered Indigenous [Native] Women and Girls (MMIWG), who have disappeared in growing numbers over the past few decades, never to be seen alive or heard from again. The vanishing of these women, some of whom have underage children, oftentimes results in guardianship, custody, and adoption legalities that should be determined solely by the tribal court systems. Consequently, Native children have not fared too well under the authority of public child welfare agencies either (Fox, 2003; Willeto, 2007).

Native individuals, many of whom were stolen from their relatives or tribal communities in childhood, as well as transcultural adoptees, have experienced a multitude of complex mental health maladies associated with removal from their tribal origins. These issues have to do with



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identity formation enigmas, or not knowing one's origins, and can instill a deep emotional impact with feelings of being *robbed of identity*, and are often reinforced by messages imputed by the dominant society of being *no good* (Hilleary, 2018). Still others, have sought to reconnect with their tribal families and communities, expressing ideas such as: *I was adopted and I'm looking for my tribe, I want to know who my parents are . . .*, and *I want to know who my relatives are* (American Bar Association, 2017). Survivors of the boarding school era have expressed feelings and experiences that are very similar to those of the adoptees (Mannes, 1995).

Media exposure promoting negative stereotypes, images, and negative news about Native people not only reinforces stereotypes, but also normalizes violence and takes a heavy psychological toll on Native populations who are routinely exposed to messages that insinuate their inferior status. For example, *the drunken Indian* stereotype persists, however, research has demonstrated that the rates of abstinence from alcohol are highest among Native Americans as compared to other ethnic groups (Cunningham et al., 2016). Yet, facts such as these are typically ignored or seldom publicized at best.

Legalities also tend to compound the harms to Native people. Complex jurisdictional boundaries affecting Indian country have resulted in an over representation of Native people being incarcerated (Rolnick and Arya, 2008; Rolnick, 2015). However, as the Society of Indian Psychologists, we are not scholars of the law. Yet, we contend that if the law is causing harm to Native people, then it must be changed! As the Society of Indian Psychologists, we are scholars, professionals, and experts in the mental and behavioral health and wellbeing of American Indians and other Native peoples, and we implore all who would perpetuate harm to Native



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peoples to cease and desist all actions that are contrary to the welfare and wellbeing of Native people. It is well past the time to abate such callous behavior toward Native Americans.

## We Need Our Children and They Need Us

Despite the oppression, subjugation, and disenfranchisement of the basic liberties that Americans enjoy, Native peoples possess an indomitable Spirit that will not be broken. We recognize the beauty of our Native cultures, the wisdom inherent in Native values, and we want to impart our seeds of knowledge and sustain the legacy of our ancestry to our children such that they will come to know and love all parts of themselves, despite our long history of condemnation. To continue the removal of Native children from their cultural roots will only reinforce internalized racism. One of the key things that helps to define Native people, as nations, tribes, as individuals, and even as human beings, is our sense of self-identity and our collective knowledges of the past. Native people yet prevail, we are still here, we need our children, and more importantly, they *need* us!



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