



AMERICAN ACADEMY OF ADOPTION ATTORNEYS

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NATIONAL ADOPTION ASSOCIATION DISAPPOINTED WITH NEW FEDERAL INDIAN CHILD WELFARE GUIDELINES

Washington, DC – The nation’s largest constituent group of adoption attorneys, law professors and judges is reacting to the Department of Interior’s recently issued guidelines from the Bureau of Indian Affairs (BIA) concerning the Indian Child Welfare Act (ICWA), a federal law established in 1978 to protect Native American children, families and tribes and to address the issue of the mass removal of Native American children from reservations by state welfare agencies. The law was enacted to protect “the relationship between Indian tribes and Indian children domiciled on the reservation.”

The ICWA applies to any child who is either a member or eligible to be a member of a federally recognized tribe where a custody determination is being made. While the BIA and other proponents of the federal law are focused on bolstering its applicability, the American Academy of Adoption Attorneys (AAAA) requests an opportunity to participate in the process that may result in amendments made to the existing law.

In a statement given by the American Academy of Adoption Attorneys, president Laurie Goldheim says:

“Several months ago, the Department of Interior through the Bureau of Indian Affairs advised our Academy and other interested child welfare groups that there would be an opportunity to provide comments and feedback to any proposed revisions to the BIA’s federal ICWA guidelines. However, in what appears to be a purposeful effort to bypass input from our Academy, the public, and other child-focused organizations, the BIA recently published amended guidelines and made them effective immediately.

As distinguished professionals in the field of adoption and foster care, we and many other groups who work in the courts and the child welfare system are appalled by this surprise publication. The federal government’s unwillingness to hear from those groups who have been in the field for many years working directly with those families and children who will be negatively impacted by these guidelines is alarming.

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As a nonprofit organization comprised of child welfare experts, we are committed to the ethical practice of adoption law. It is our mission to support and advocate for the rights of families and to consider the interest of all parties, especially children. Sadly, there are entire sections of the newly published BIA guidelines that completely disregard the best interest of children.

We are shocked by the process by which these guidelines were promulgated and published, and the blatant failure to provide legal protections for children, especially children who are in the foster care system. For example, in cases involving the removal of a child from his or her placement (even if the child will suffer serious harm), the court is directed not to consider attachment or bonding issues. The new guidelines also state that the "best interest of the child" is not a consideration, thus treating them as possessions as opposed to human beings with rights of their own.

As long-time protectors of the best interest of children, the Academy is stunned by the lack of due process in formulating these new guidelines. While the guidelines are only recommendations and do not have the authority of federal enacted law or federal regulations, if these guidelines are given weight by the courts and child welfare agencies, children will most definitely be hurt.

We are committed to ensuring that every child has the best chance for a positive and fair outcome in the judicial system. We urge the Department of Interior to reevaluate how these guidelines were drafted and issued, and allow the Academy and other organizations who work in the field with families and children to be involved in the process."

Mark Demaray, a former board member and past president of the Academy and practicing adoption attorney in Washington state, explains what he and his peers witness first-hand.

"While the original intention of Congress was good, what we have seen is a federal law that is not always clear or understood by the courts. This too often results in a negative impact on children and biological parents who do not have, and would not have, any connection whatsoever to any tribe other than biology, and oftentimes through extreme distant ancestry. There is a real concern over these amended guidelines and how they may be interpreted, and the possible violation of a child's constitutional due process and equal protection rights."

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Goldheim acknowledges there are holes in the adoption and foster care system that need to be fixed. She says the Academy's desire to provide input for the BIA's guidelines is two-fold.

"The first is to collaborate in order to repair holes. We recognize that in cases like those taking place in South Dakota, stronger guidelines need to be established to address the systemic problems negatively impacting Native Americans. But second, we want to make sure that the best interest of children, regardless of their race or ethnic background, is paramount when child-focused guidelines or laws are established."

The Academy says it welcomes the opportunity to work with the United States Attorney General, the staff at the BIA, and all interested organizations to ensure that federal guidelines are developed in such a way as to respect the rights of all, and most importantly, to not bring harm to any child.

"We have been working for many years with families and children who are directly impacted by these laws and guidelines, and we want to be a part of the solution," says Demaray. "No one wants to witness our system revert to a time before ICWA with the problems of removal of many Native American children from their families and tribes."

Goldheim, Demaray, and their colleagues plan to work closely with other advocacy groups in the adoption and foster care field to encourage the BIA to meet with them in the very near future in order to present their concerns, and to provide feedback and suggestions for revisions to the recently amended ICWA guidelines.

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ABOUT THE AMERICAN ACADEMY OF ADOPTION ATTORNEYS

The American Academy of Adoption Attorneys (AAAA) is the nation's largest organization represented by attorneys, judges and law professors who are dedicated to enhancing and improving the practice of adoption law. AAAA's mission is to support the rights of children to live in safe, permanent homes with loving families, to ensure appropriate consideration of the interests of all parties to adoptions, and to assist in the orderly and legal process of adoption. Fellows of the Academy are by invitation only and represent adoptive parents, birth parents, adoption agencies and others involved in adoptions and they must maintain their practice according to the highest standards of professionalism, competence and ethics. AAAA supports parenting, including adoption and foster parenting, by individuals and couples, regardless of race, color, sex, sexual orientation, age, religion, national origin, marital status, political belief or physical handicap, as long as they are qualified and approved to do so under the laws of the relevant state(s). To learn more about the Academy, visit www.adoptionattorneys.org. To follow AAAA on social media, visit <https://www.facebook.com/AdoptionAcademy> and on Twitter @AdoptionAcademy.