

**Case No. 17-15839**

---

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

---

A.D. C.C., L.G., and C.R., by  
CAROL COGHLAN CARTER, and  
DR. RONALD FEDERICI, et al.,

vs.

KEVIN WASHBURN, (in his official capacity as Assistant Secretary  
of Indian Affairs, BUREAU OF INDIAN AFFAIRS), et al.

---

**APPELLANTS' EXCERPT OF RECORD**

---

Appeal from the United States District Court for the District of Arizona  
Case No. 2:15-CV-1259-PHX-NVW, Hon. Neil Wake, presiding

---

**COOPER & KIRK, PLLC**  
Michael W. Kirk  
Brian W. Barnes  
Harold S. Reeves  
1523 New Hampshire Ave., N.W.  
Washington, D.C. 20036  
(202) 220-9600  
(202) 220-9601 (fax)

**Scharf-Norton Center for  
Constitutional Litigation at the  
GOLDWATER INSTITUTE**  
Timothy Sandefur (033670)  
Aditya Dynar (031583)  
500 E. Coronado Rd.  
Phoenix, Arizona 85004  
(602) 462-5000  
[litigation@goldwaterinstitute.org](mailto:litigation@goldwaterinstitute.org)  
g

*Attorneys for Appellants*

**TABLE OF CONTENTS**

<b>Document Description</b>	<b>Trial Court Docket No.</b>	<b>Page No.</b>
Plaintiffs' Notice of Appeal (April 24, 2017)	246	ER.001
Judgment of Dismissal in a Civil Case (Mar. 16, 2017)	245	ER.005
Order (Mar. 16, 2017)	244	ER.006
First Amended Civil Rights Class Action Complaint for Declaratory, Injunctive, and Other Relief (Apr. 5, 2016)	173	ER.026
Excerpt from Exhibit 1 to First Amended Complaint	173	ER.061
U.S. District Court Civil Docket Report		ER.064

**Scharf-Norton Center for  
Constitutional Litigation at the  
GOLDWATER INSTITUTE**  
Christina Sandefur (027983)  
Aditya Dynar (031583)  
500 E. Coronado Rd.  
Phoenix, Arizona 85004  
(602) 462-5000  
[litigation@goldwaterinstitute.org](mailto:litigation@goldwaterinstitute.org)

**COOPER & KIRK, PLLC**  
Michael W. Kirk (admitted *pro hac vice*)  
Brian W. Barnes (admitted *pro hac vice*)  
Harold S. Reeves (admitted *pro hac vice*)  
1523 New Hampshire Ave., N.W.  
Washington, D.C. 20036  
(202) 220-9600  
(202) 220-9601 (fax)

*Attorneys for Plaintiffs*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

A.D., C.C., L.G., and C.R., by CAROL  
COGHLAN CARTER, and DR. RONALD  
FEDERICI, their next friends;  
S.H. and J.H., a married couple;  
M.C. and K.C., a married couple;  
K.R. and P.R., a married couple;  
for themselves and on behalf of a class of  
similarly-situated individuals,  
Plaintiffs,

vs.

KEVIN WASHBURN, in his official  
capacity as Assistant Secretary of Indian  
Affairs, BUREAU OF INDIAN AFFAIRS;  
SALLY JEWELL, in her official capacity as  
Secretary of the Interior, U.S.  
DEPARTMENT OF THE INTERIOR;  
GREGORY A. McKAY, in his official  
capacity as Director of ARIZONA  
DEPARTMENT OF CHILD SAFETY,  
Defendants,

GILA RIVER INDIAN COMMUNITY; and  
NAVAJO NATION,  
Intervenor Defendants.

No. CV-15-1259-PHX-NVW

**PLAINTIFFS' NOTICE OF  
APPEAL**

1 Notice is hereby given that A.D., C.C., L.G., and C.R., by Carol Coghlan Carter  
2 and Dr. Ronald Federici, S.H., J.H., M.C., K.C., K.R. and P.R., plaintiffs in the above-  
3 named case, hereby appeal to the United States Court of Appeals for the Ninth Circuit  
4 from the Order (Doc. 244) and Judgment (Doc. 245) dismissing the First Amended  
5 Complaint entered in this action on March 16, 2017.

6  
7 **RESPECTFULLY SUBMITTED** this 24 day of April, 2017 by:

8  
9 /s/ Aditya Dynar

10 Christina Sandefur (027983)

11 Aditya Dynar (031583)

12 **Scharf-Norton Center for Constitutional Litigation**  
13 **at the GOLDWATER INSTITUTE**

14 Michael W. Kirk (admitted *pro hac vice*)

15 Brian W. Barnes (admitted *pro hac vice*)

16 Harold S. Reeves (admitted *pro hac vice*)

17 **COOPER & KIRK, PLLC**

18 *Attorneys for Plaintiffs*

19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

Document Electronically Filed and Served by ECF this 24 day of April, 2017.

MARK BRNOVICH  
ATTORNEY GENERAL  
John S. Johnson  
Dawn R. Williams  
Gary N. Lento  
Melanie G. McBride  
Joshua R. Zimmerman  
Wendy Jacobsen Harrison  
1275 West Washington Street  
Phoenix, Arizona 85007  
[John.Johnson@azag.gov](mailto:John.Johnson@azag.gov)  
[Dawn.Williams@azag.gov](mailto:Dawn.Williams@azag.gov)  
[Gary.Lento@azag.gov](mailto:Gary.Lento@azag.gov)  
[Melanie.McBride@azag.gov](mailto:Melanie.McBride@azag.gov)  
[Joshua.Zimmerman@azag.gov](mailto:Joshua.Zimmerman@azag.gov)  
[Wendy.Harrison@azag.gov](mailto:Wendy.Harrison@azag.gov)  
*Attorneys for Defendant Gregory McKay*

Steven M. Miskinis  
JoAnn Kintz  
Christine Ennis  
Ragu-Jara Gregg  
U.S. Department of Justice  
ENRD/ Indian Resources Section  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044-7611  
[Steven.miskinis@usdoj.gov](mailto:Steven.miskinis@usdoj.gov)  
[JoAnn.Kintz@usdoj.gov](mailto:JoAnn.Kintz@usdoj.gov)  
[Christine.Ennis@usdoj.gov](mailto:Christine.Ennis@usdoj.gov)  
[ragu-jara.gregg@usdoj.gov](mailto:ragu-jara.gregg@usdoj.gov)  
*Attorneys for Federal Defendants*

Ethel Branch, Attorney General  
THE NAVAJO NATION  
Katherine Belzowski  
Paul Spruhan  
NAVAJO NATION DEPT. OF JUSTICE  
P.O. Box 2010  
Window Rock, Navajo Nation (AZ) 86515  
[kbelzowski@nndoj.org](mailto:kbelzowski@nndoj.org)  
[pspruhan@nndoj.org](mailto:pspruhan@nndoj.org)  
*Attorneys for Intervenor Navajo Nation*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Linus Everling  
Thomas L. Murphy  
GILA RIVER INDIAN COMMUNITY  
525 W. Gu u Ki  
P.O. Box 97  
Sacaton, AZ 85147  
[Linus.everling@gric.nsn.us](mailto:Linus.everling@gric.nsn.us)  
[Thomas.murphy@gric.nsn.us](mailto:Thomas.murphy@gric.nsn.us)  
*Attorneys for Intervenor Gila River Indian Community*

Donald R. Pongrace  
Merrill C. Godfrey  
AKIN GUMP STRAUSS HAUER & FELD LLP  
1333 New Hampshire Ave., NW  
Washington, DC 20036-1564  
[dpongrace@akingump.com](mailto:dpongrace@akingump.com)  
[mgodfrey@akingump.com](mailto:mgodfrey@akingump.com)  
*Counsel for Intervenor Gila River Indian Community*

/s/ Diane Shaw  
Diane Shaw

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Carol Coghlan Carter, et al.,  
Plaintiffs,  
v.  
Kevin Washburn, et al.,  
Defendants.

**NO. CV-15-01259-PHX-NVW**  
**JUDGMENT OF DISMISSAL IN A  
CIVIL CASE**

**Decision by Court.** This action came for consideration before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that pursuant to the Court’s Order filed March 16, 2017, judgment of dismissal is entered without prejudice for lack of jurisdiction and lack of standing.

Brian D. Karth  
District Court Executive/Clerk of Court

March 16, 2017

By s/ D. Draper  
Deputy Clerk

1 **WO**

2

3

4

5

6

IN THE UNITED STATES DISTRICT COURT

7

FOR THE DISTRICT OF ARIZONA

8

9 A.D., C.C., L.G., and C.R., by Carol  
10 Coghlan Carter, and Dr. Ronald Federici,  
11 their next friends; S.H. and J.H., a married  
12 couple; M.C. and K.C., a married couple;  
K.R. and P.R., a married couple; for  
themselves and on behalf of a class of  
similarly-situated individuals,

No. CV-15-01259-PHX-NVW

**ORDER**

13

Plaintiffs,

14

v.

15

Kevin Washburn, in his official capacity as  
Assistant Secretary of Indian Affairs,  
Bureau of Indian Affairs; Sally Jewell, in  
her official capacity as Secretary of the  
Interior, U. S. Department of the Interior;  
Gregory A. McKay, in his official capacity  
as Director of Arizona Department of Child  
Safety,

19

20

Defendants,

21

Gila River Indian Community and the  
Navajo Nation,

22

Intervenor Defendants.

23

24

25

Before the Court are motions to dismiss the First Amended Complaint by the  
Federal Defendants (Doc. 178) and the State Defendant (Doc. 179), the Responses, and  
the Replies. Also before the Court are motions to dismiss the First Amended Complaint  
by the Intervenor-Defendants Gila River Indian Community (Doc. 217) and the Navajo

26

27

28



1 Nation (Doc. 218), the response, and the replies. Amicus curiae briefs have been filed in  
2 support of and in opposition to the motions to dismiss.

3 In this action the adult Plaintiffs and those who have undertaken to speak for the  
4 child Plaintiffs attempt to challenge parts of the Indian Child Welfare Act (“ICWA”) as  
5 unconstitutional racial discrimination. They also challenge Congress’s power to enact  
6 laws regulating state court proceedings and ousting state laws concerning foster care  
7 placement, termination of parental rights, preadoptive placement, and adoptive  
8 placements of some off-reservation children of Indian descent. More specifically, these  
9 are children whose parents elected to leave Indian Country and take up residence off  
10 reservation with the benefits of and obligations under state law of all other persons within  
11 the jurisdiction of the state and outside Indian Country.

12 Plaintiffs seek a declaration that certain provisions of the Indian Child Welfare Act  
13 and of the Guidelines for State Courts and Agencies in Indian Child Custody Proceedings  
14 published on February 25, 2015 (“2015 Guidelines”)<sup>1</sup> by the Department of the Interior,  
15 Bureau of Indian Affairs (“BIA”), violate the United States Constitution, federal civil  
16 rights statutes, and Title VI of the Civil Rights Act by requiring State courts to treat  
17 Indian children differently than non-Indian children in child custody proceedings. They  
18 seek to enjoin the Federal Defendants from enforcing these provisions and the State  
19 Defendant from complying with and enforcing these provisions. The Guidelines do not  
20 have the force of law. They might be viewed uncharitably as avoiding the rule-making  
21 requirements of the Administrative Procedures Act but still having enough of the look of  
22 regulations that judges and others will follow them anyway.

23 In ICWA, adopted in 1978, Congress responded to the increasing adoption by non-  
24 Indian families of Indian children resident off-reservation and subject to the exclusive  
25 jurisdiction of state courts. Congress enacted ICWA:

26 . . . to protect the best interests of Indian children and to promote the  
27 stability and security of Indian tribes and families by the establishment of

---

28 <sup>1</sup> 80 Fed. Reg. 10146–10159 (Feb. 25, 2015) (superseding and replacing the  
guidelines published at 44 Fed. Reg. 67584–67595 (Nov. 28, 1979)).

1 minimum Federal standards for the removal of Indian children from their  
2 families and the placement of such children in foster or adoptive homes  
3 which will reflect the unique values of Indian culture, and by providing for  
4 assistance to Indian tribes in the operation of child and family service  
5 programs.

6 25 U.S.C. § 1902.

7 From the outset Plaintiffs have grounded sweeping challenges to ICWA and the  
8 2015 Guidelines on vague or narrow allegations of their own experience with ICWA.  
9 The motions to dismiss probe the jurisdictional specifics of each Plaintiff's allegations.

### 10 **I. REGULATORY BACKGROUND**

11 Congress authorized the Department of the Interior to make rules and regulations  
12 necessary for carrying out provisions of ICWA. 25 U.S.C. § 1952. The Department  
13 promulgated regulations to govern funding and administering Indian child and family  
14 service programs as authorized by ICWA. 25 C.F.R. § 23.1. The regulations also  
15 addressed notice procedures for involuntary child custody proceedings involving Indian  
16 children, but they “did not address the specific requirements and standards that ICWA  
17 imposes upon State court child custody proceedings, beyond the requirements for  
18 contents of the notice.” 80 Fed. Reg. 10146, 10147. To supplement the regulations, the  
19 Department published guidelines for State courts to use in interpreting many of ICWA's  
20 requirements in Indian child custody proceedings. *Id.* In 2015, the Department published  
21 the updated 2015 Guidelines to supersede and replace the guidelines published in 1979.  
22 *Id.* Like the previous guidelines, the 2015 Guidelines are not tethered to regulations.

23 The 2015 Guidelines “provide standard procedures and best practices to be used in  
24 Indian child welfare proceedings in State courts.” 80 Fed. Reg. 10146, 10147. They  
25 state, “In order to fully implement ICWA, these guidelines should be applied in all  
26 proceedings and stages of a proceeding in which the Act is or becomes applicable.” *Id.* at  
27 10150. Although the 2015 Guidelines are not binding, Arizona courts nevertheless have  
28 considered them in interpreting ICWA. *Gila River Indian Cmty. v. Dep't of Child Safety*,  
238 Ariz. 531, 535 (Ct. App. 2015); *Gila River Indian Cmty. v. Dep't of Child Safety*, 240  
Ariz. 385, 389 n.12 (Ct. App. 2016).

1 In June 2016, the Department added a new subpart to its regulations implementing  
2 ICWA, which “addresses requirements for State courts in ensuring implementation of  
3 ICWA in Indian child-welfare proceedings and requirements for States to maintain  
4 records under ICWA.” 81 Fed. Reg. 38778, 38778 (June 14, 2016). The regulations in  
5 the new subpart “clarify the minimum Federal standards governing implementation of  
6 [ICWA] to ensure that ICWA is applied in all States consistent with the Act’s express  
7 language, Congress’s intent in enacting the statute, and to promote the stability and  
8 security of Indian tribes and families.” 25 C.F.R. § 23.101.

9 The new subpart became effective on December 12, 2016. None of the provisions  
10 of the new subpart affects a proceeding under State law that was initiated before  
11 December 12, 2016, but the provisions of the new subpart do apply to any subsequent  
12 proceeding in the same matter or affecting the custody or placement of the same child.  
13 23 C.F.R. § 23.143. For example, the new subpart does not apply to a foster care  
14 placement proceeding initiated in November 2016, but it does apply to an adoptive  
15 placement proceeding initiated in January 2017 for the same child.

16 In conjunction with the new subpart of ICWA regulations, on December 12, 2016,  
17 the Department published Guidelines for Implementing the Indian Child Welfare Act  
18 (“2016 Guidelines”), which replaced the 1979 and 2015 versions. Under each heading,  
19 the 2016 Guidelines provide the text of the regulation (if there is one), guidance,  
20 recommended practices, and suggestions for implementation.

21 The Amended Complaint does not challenge any regulations or the 2016  
22 Guidelines. It challenges only certain provisions of ICWA and the 2015 Guidelines.

## 23 **II. THE AMENDED COMPLAINT**

### 24 **A. Procedural Background**

25 On July 6, 2015, Plaintiffs filed a Civil Rights Class Action Complaint for  
26 Declaratory and Injunctive Relief. (Doc. 1.) On December 18, 2015, during oral  
27 argument regarding standing issues raised in motions to dismiss, Plaintiffs’ counsel  
28 indicated that Plaintiffs would like to amend their complaint to add additional plaintiffs.

1 (Doc. 122.) On February 22, 2016, the Court ordered Plaintiffs to file a status report  
2 stating whether and when they planned to amend their complaint to add additional  
3 plaintiffs. (Doc. 145.) On February 29, 2016, Plaintiffs reported they wanted to amend  
4 their complaint to add two children and their foster/preadoptive parents as plaintiffs and  
5 to update facts regarding pending State court proceedings. (Doc. 149.) On March 2,  
6 2016, Plaintiffs sought leave to file an amended complaint, which Defendants opposed by  
7 arguing, among other things, that both the proposed additional plaintiffs and the original  
8 plaintiffs lacked standing. (Docs. 150, 160, 162.) On April 4, 2016, the Court granted  
9 Plaintiffs leave to amend their complaint and denied the pending motions to dismiss as  
10 moot. (Doc. 172.)

11 On April 5, 2016, Plaintiffs' First Amended Civil Rights Class Action Complaint  
12 for Declaratory, Injunctive, and Other Relief ("Amended Complaint") was filed. (Doc.  
13 173.) On April 22, 2016, the Federal Defendants and the State Defendant filed motions  
14 to dismiss the Amended Complaint. (Docs. 178, 179.) On September 29, 2016, the Gila  
15 River Indian Community and the Navajo Nation were granted permissive intervention,  
16 and their proposed motions to dismiss the Amended Complaint were filed. (Doc. 216.)

### 17 **B. Plaintiffs' Claims for Relief**

18 Count 1 of the Amended Complaint alleges that 25 U.S.C. §§ 1911(b), 1912(d),  
19 1912(e), 1912(f), 1915(a), 1915(b) and §§ A.2, A.3, B.1, B.2, B.4, B.8, C.1, C.2, C.3,  
20 D.2, D.3, F.1, F.2, F.3, F.4 of the 2015 Guidelines violate the equal protection guarantee  
21 of the Fifth Amendment. Count 2 alleges that the same statutes and provisions of the  
22 2015 Guidelines violate the due process guarantee of the Fifth Amendment. Count 3  
23 alleges that the State Defendant's compliance with the challenged statutes and sections of  
24 the 2015 Guidelines violates the substantive due process and equal protection clauses of  
25 the Fourteenth Amendment.

26 Count 4 alleges that ICWA exceeds the federal government's power under the  
27 Indian Commerce Clause and the Tenth Amendment and impermissibly commandeers  
28 State courts and State agencies. Count 5 alleges that the challenged statutes and sections

1 of the 2015 Guidelines violate Plaintiffs’ associational freedoms under the First  
2 Amendment by forcing them to associate with tribes and tribal communities. Count 6  
3 alleges that the BIA exceeded its authority by publishing §§ C.1, C.2, and C.3 of the 2015  
4 Guidelines, which expand application of § 1911(b) beyond its terms. Count 7 seeks  
5 nominal damages of \$1 to each of the named Plaintiffs and to each of the members of the  
6 class they seek to represent under Title VI of the Civil Rights Act, 42 U.S.C.  
7 §§ 2000d-2000d-7.<sup>2</sup>

### 8 **C. The Parties**

9 The Amended Complaint is filed on behalf of Plaintiffs and all off-reservation  
10 Arizona-resident children with Indian ancestry and all off-reservation Arizona-resident  
11 foster, preadoptive, and prospective adoptive parents in child custody proceedings  
12 involving children with Indian ancestry.

13 Plaintiff A.D. is an enrolled member of the Gila River Indian Community.  
14 Parental rights of A.D.’s biological parents have been terminated by the State court.  
15 Plaintiffs S.H. and J.H., a married couple, are foster/preadoptive parents of A.D. and have  
16 taken care of A.D. since birth. Their petition to adopt A.D. was pending in the State  
17 court on April 5, 2016. Neither S.H. nor J.H. is an enrolled member of an Indian tribe or  
18 eligible for membership in an Indian tribe.

19 Plaintiff C.C. is an enrolled member of the Navajo Nation. Parental rights of  
20 C.C.’s biological parents were terminated, and adoption of C.C. by Plaintiffs M.C. and  
21 K.C. was finalized by the State court in November 2015. C.C. continuously remained in  
22 foster care with M.C. and K.C. for four years before the adoption was finalized. Neither  
23 M.C. nor K.C. is an enrolled member of an Indian tribe or eligible for membership in an  
24 Indian tribe.

---

25 <sup>2</sup> Section 2000d states: “No person in the United States shall, on the ground of  
26 race, color, or national origin, be excluded from participation in, be denied the benefits  
27 of, or be subjected to discrimination under any program or activity receiving Federal  
28 financial assistance.” Section 2000d-7 provides that in a suit against a State for violating  
§ 2000d, remedies are available to the same extent they are available in a suit against any  
public or private entity other than a State.

1 Plaintiff C.R. is eligible for membership in and is a child of a member of, or is  
2 already an enrolled member of, the Gila River Indian Community. Plaintiff L.G. is  
3 C.R.'s half-sibling and is not eligible for membership in the Pascua Yaqui Tribe of  
4 Arizona. L.G. and C.R. were taken into protective custody when C.R. was born and L.G.  
5 was about two years old. As of April 5, 2016, the parental rights of C.R.'s and L.G.'s  
6 biological parents had not been terminated by the State court, which is treating C.R.'s and  
7 L.G.'s cases as one. C.R. and L.G. have continuously remained in foster care with  
8 Plaintiffs K.R. and P.R., a married couple, who want to adopt C.R. and L.G.

9 The Amended Complaint names Carol Coghlan Carter and Dr. Ronald Federici as  
10 "next friends" to A.D., C.C., C.R., L.G., and all off-reservation children with Indian  
11 ancestry in the State of Arizona in child custody proceedings.

12 The Federal Defendants are Kevin Washburn in his official capacity as Assistant  
13 Secretary of Indian Affairs, BIA, and Sally Jewell in her official capacity as Secretary of  
14 the Interior, U.S. Department of the Interior. The State Defendant is Gregory McKay in  
15 his official capacity as Director of Arizona Department of Child Safety. Intervenor  
16 Defendants are the Gila River Indian Community and the Navajo Nation, both federally  
17 recognized tribes.

### 18 **III. LEGAL STANDARD**

19 On a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), all  
20 allegations of material fact are assumed to be true and construed in the light most  
21 favorable to the nonmoving party. *Cousins v. Lockyer*, 568 F.3d 1063, 1067 (9th Cir.  
22 2009). To avoid dismissal, a complaint need contain only "enough facts to state a claim  
23 for relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570  
24 (2007). The principle that a court accepts as true all of the allegations in a complaint  
25 does not apply to legal conclusions or conclusory factual allegations. *Ashcroft v. Iqbal*,  
26 556 U.S. 662, 678 (2009).

27 Under Rule 12(b)(1), a defendant may challenge the plaintiff's jurisdictional  
28 allegations by either (1) attacking the plaintiff's allegations as insufficient on their face to

1 invoke federal jurisdiction or (2) contesting the truth of the plaintiff’s factual allegations,  
 2 usually by introducing evidence outside the pleadings. *Leite v. Crane Co.*, 749 F.3d  
 3 1117, 1121 (9th Cir. 2014). The first, a facial attack, is resolved by the district court as it  
 4 would be under Rule 12(b)(6), *i.e.*, accepting the plaintiff’s allegations as true and  
 5 drawing all reasonable inferences in the plaintiff’s favor, the court determines whether  
 6 the allegations are legally sufficient to invoke the court’s jurisdiction. *Id.* The second, a  
 7 factual attack, requires the plaintiff to support its jurisdictional allegations with  
 8 competent proof, under the same evidentiary standard applied on summary judgment.  
 9 Thus, the plaintiff bears the burden of proving by a preponderance of the evidence that  
 10 each of the requirements for subject matter jurisdiction has been met. *Id.*

#### 11 **IV. STANDING**

##### 12 **A. Requirements for Article III Standing**

13 “A suit brought by a plaintiff without Article III standing is not a ‘case or  
 14 controversy,’ and an Article III federal court therefore lacks subject matter jurisdiction  
 15 over the suit.” *Braunstein v. Arizona Dep’t of Transp.*, 683 F.3d 1177, 1184 (9th Cir.  
 16 2012). “Standing must be shown with respect to each form of relief sought, whether it be  
 17 injunctive relief, damages or civil penalties.” *Bates v. United Parcel Serv., Inc.*, 511 F.3d  
 18 974, 985 (9th Cir. 2007) (citing *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC),*  
 19 *Inc.*, 528 U.S. 167, 185 (2000)).

20 To satisfy Article III standing, a plaintiff must show:

- 21 (1) [he or she] has suffered an “injury in fact” that is (a) concrete and
- 22 particularized and (b) actual or imminent, not conjectural or hypothetical;
- 23 (2) the injury is fairly traceable to the challenged action of the defendant;
- 24 and (3) it is likely, as opposed to merely speculative, that the injury will be
- 25 redressed by a favorable decision.

26 *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180–81  
 27 (2000). “The party invoking federal jurisdiction bears the burden of establishing these  
 28 elements.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992).

For an equal protection claim, a plaintiff may show an “injury in fact” caused by  
 denial of equal treatment:

1 When the government erects a barrier that makes it more difficult for  
 2 members of one group to obtain a benefit than it is for members of another  
 3 group, a member of the former group seeking to challenge the barrier need  
 4 not allege that he would have obtained the benefit but for the barrier in  
 5 order to establish standing. The “injury in fact” in an equal protection case  
 of this variety is the denial of equal treatment resulting from the imposition  
 of the barrier, not the ultimate inability to obtain the benefit.

6 *Ne. Fla. Chapter, Associated Gen. Contractors of America v. Jacksonville*, 508 U.S. 656,  
 7 666 (1993). “[E]qual treatment under the law is a judicially cognizable interest that  
 8 satisfies the case or controversy requirement of Article III, even if it brings no tangible  
 9 benefit to the party asserting it.” *Davis v. Guam*, 785 F.3d 1311, 1316 (9th Cir. 2015)  
 10 (citing *Heckler v. Matthews*, 465 U.S. 728, 739 (1984)). “Unequal treatment is an injury  
 11 even if curing the inequality has no tangible consequences.” *Id.*

12 However, even in the equal protection context, “a plaintiff must assert a  
 13 particularized injury, rather than a generalized grievance.” *Braunstein*, 683 F.3d at 1185.  
 14 “Even if the government has discriminated on the basis of race, only those who are  
 15 ‘personally denied’ equal treatment have a cognizable injury under Article III.” *Id.*  
 16 (finding plaintiff had not provided any evidence the government’s racial preference  
 17 program affected him personally or had impeded his ability to compete for work on an  
 18 equal basis).

19 Ordinarily, the existence of federal jurisdiction depends on the facts as they  
 20 existed when the complaint was filed. *Lujan*, 504 U.S. at 569 n.4.

21 **B. Injury in Fact that Is Concrete and Particularized, Actual or**  
 22 **Imminent, and Fairly Traceable to the Challenged Action**

23 The Amended Complaint challenges 25 U.S.C. §§ 1911(b), 1912(d), 1912(e),  
 24 1912(f), and 1915(b) and certain sections of the 2015 Guidelines on multiple grounds,  
 25 including denial of equal treatment, due process, and associational freedoms.

26 **1. Section 1911(b): Jurisdiction-Transfer Provision**

27 Section 1911(b) requires State courts to transfer any proceeding for the foster care  
 28 placement of, or termination of parental rights to, an Indian child not domiciled or  
 residing within the reservation of the child’s tribe to the tribal court upon petition of



1 either parent, the Indian custodian, or the Indian child's tribe, in the absence of good  
2 cause to the contrary, objection by either parent, or declination by the tribal court of such  
3 tribe. The Amended Complaint does not allege that transfer of jurisdiction has been  
4 sought for any of the child Plaintiffs except for A.D.

5 In A.D.'s case, the Arizona Court of Appeals affirmed the juvenile court's denial  
6 of the Gila River Indian Community's motion to transfer jurisdiction. *Gila River Indian*  
7 *Cmty. v. Dep't of Child Safety*, 240 Ariz. 385, 379 P.3d 1016 (Ct. App. Aug. 11, 2016).  
8 The court explained that ICWA defines four types of child custody proceedings: foster  
9 care placement, termination of parental rights proceedings, preadoptive placement, and  
10 adoptive placement. *Id.* at 390, 379 P.3d at 1021. Section 1911(b) provides only for  
11 transfer of foster care placement or termination of parental rights proceedings. The court  
12 explained that under ICWA the term "foster care placement" is limited to "where parental  
13 rights have not been terminated," and therefore § 1911(b) does not allow transfer to tribal  
14 court of State preadoptive and adoptive placement proceedings occurring after parental  
15 rights have terminated. *Id.* The court found:

16 In this case, neither A.D.'s biological parents nor the Community sought to  
17 transfer the proceedings from the juvenile court to the Community's  
18 Children's Court before termination of parental rights. By the time the  
19 Community moved to transfer, A.D.'s case had progressed to the point  
20 where the biological parents' rights had been terminated and legal custody  
21 had been permanently placed with DCS [the Arizona Department of Child  
22 Safety], the juvenile court had found the foster parents were an adoptive  
23 placement, and the court had authorized DCS to facilitate permanent  
24 placement of A.D. through adoption. Further, an adoption petition had  
25 been filed. By not moving to transfer jurisdiction before termination of the  
26 biological parents' rights, the Community effectively waived its right to  
27 seek transfer of jurisdiction under 25 U.S.C. § 1911(b).

28 *Id.* at 391, 379 P.3d 1022. Thus, the Gila River Indian Community did not seek to  
enforce § 1911(b), but rather it sought a transfer of jurisdiction not authorized by  
§ 1911(b).

It can be inferred that A.D. and her foster parents suffered a concrete and  
particularized injury as a result of the Gila River Indian Community's litigation.

1 However, their injury resulted from the Gila River Indian Community's frivolous  
 2 invocation of § 1911(b) for a proceeding it plainly does not authorize. Their injury is  
 3 fairly traceable to the Gila River Indian Community's groundless intrusion into their  
 4 preadoptive and adoptive proceeding beyond the scope of § 1911(b), but not to § 1911(b)  
 5 itself.<sup>3</sup>

6 Thus, the Amended Complaint does not allege facts showing that any of the  
 7 Plaintiffs suffered a concrete and particularized injury, actual or imminent, and fairly  
 8 traceable to § 1911(b).

## 9 2. Section 1912(d): Active Efforts Provision

10 Section 1912(d) requires State officials to make "active efforts . . . to provide  
 11 remedial services and rehabilitative programs designed to prevent the breakup of the  
 12 Indian family" and to show "that these efforts have proved unsuccessful" before an  
 13 Indian child may be placed in foster care or parental rights may be terminated. Although  
 14 ICWA does not define "active efforts," § A.2 of the 2015 Guidelines defines "active  
 15 efforts" as:

16 *Active efforts* are intended primarily to maintain and reunite an Indian child  
 17 with his or her family or tribal community and constitute more than  
 18 reasonable efforts as required by Title IV-E of the Social Security Act (42  
 U.S.C. § 671(a)(15)).

19 80 Fed. Reg. 10146, 10150. Section A.2 also states: "'Active efforts' are separate and  
 20 distinct from requirements of the Adoption and Safe Families Act (ASFA), 42 U.S.C.  
 21 § 1305" and "ASFA's exceptions to reunification efforts do not apply to ICWA  
 22 proceedings." *Id.* at 10150-51.<sup>4</sup> *See also* 2015 Guidelines, §§ A.3, B.1, B.2, B.4, B.8,  
 23 D.2.

---

25 <sup>3</sup> Neither the Amended Complaint nor the appellate decision in A.D.'s case states  
 26 that the Gila River Indian Community sought transfer of jurisdiction based on §§ C.1,  
 27 C.2, and C.3 of the 2015 Guidelines, which fail to explain that transfer under § 1911(b) is  
 limited to proceedings for foster care placement or termination of parental rights.

28 <sup>4</sup> The 2016 Guidelines expressly avoid comparison of "active efforts" and  
 "reasonable efforts." They do not refer to ASFA's exceptions.

1 Under 42 U.S.C. § 671(a)(15)(B), in order for a State to obtain federal financial  
2 assistance for foster care programs, the State plan must require that “reasonable efforts  
3 shall be made to preserve and reunify families [] prior to the placement of a child in  
4 foster care.” Section 671(a)(15)(D) provides exceptions to the “reasonable efforts”  
5 requirement if a court of competent jurisdiction has determined that the parent has  
6 subjected the child to “aggravated circumstances,” such as abandonment, torture, chronic  
7 abuse, and sexual abuse, or has committed murder or other specific crimes.

8 The Amended Complaint alleges that because § 1912(d) does not include ASFA’s  
9 exceptions, it requires “active efforts” to reunify families even when the children were  
10 abandoned, tortured, chronically abused, or sexually abused by family members.  
11 However, § 671(a)(15) applies only to foster care placement, and the Amended  
12 Complaint does not allege that any reunification attempts were made before foster care  
13 placement for any of the child Plaintiffs. Moreover, it does not allege that attempts were  
14 made to reunify any of the child Plaintiffs with family members who had abandoned,  
15 tortured, chronically abused, or sexual abused them.

16 The Amended Complaint also alleges that the “active efforts” provision of  
17 § 1912(d) requires more than the “reasonable efforts” required under § 671(a)(15), and it  
18 delays child custody proceedings, thereby depriving Indian children and their foster  
19 parents legal recognition of their family status, resulting in uncertainty and great distress.  
20 Section 1912(d) requires reunification attempts only before foster care placement and  
21 termination of parental rights, and the Amended Complaint does not allege that any  
22 reunification attempts were made before the child Plaintiffs were placed in foster care.  
23 Therefore, the only possible particularized injury fairly traceable to § 1912(d) that any of  
24 the Plaintiffs could have suffered is delay in termination of parental rights.<sup>5</sup>

---

25  
26 <sup>5</sup> The Amended Complaint also alleges that “active efforts” provision requires  
27 Indian children to associate with tribes and tribal communities, but it cites only to a  
28 section of the 2015 Guidelines regarding designating an Indian child’s tribe. The  
Amended Complaint does not allege that any of the child Plaintiffs was required to  
associate with tribes or tribal communities during reunification attempts.

1           The Amended Complaint alleges that C.R. and L.G. were placed in foster care  
2 with P.R. and K.R. at the time of C.R.'s birth. It alleges that State officials initially  
3 attempted reunification with C.R.'s biological mother through weekly supervised visits,  
4 but changed the case management plan to severance in September 2015. It does not  
5 allege that any reunification attempts were made other than weekly supervised visits with  
6 the biological mother. As of April 5, 2016, the parental rights of C.R.'s and L.G.'s birth  
7 parents had not been terminated. The Amended Complaint does not allege that parental  
8 rights for C.R. and L.G. would have been terminated more quickly if "reasonable efforts"  
9 under § 671(a)(15) had been made instead of "active efforts" under § 1912(d).

10           The Amended Complaint does not allege that any attempt was made to reunify  
11 C.C.'s family or A.D.'s family before parental rights were terminated.

12           Thus, the Amended Complaint does not allege facts showing that any of the  
13 Plaintiffs suffered a concrete and particularized injury, actual or imminent, and fairly  
14 traceable to § 1912(d).

### 15                   **3. Section 1912(e): Higher Evidentiary Standard for Foster Care** 16                   **Placement**

17           Section 1912(e) prohibits foster care placement "in the absence of a determination,  
18 supported by clear and convincing evidence, including testimony of qualified expert  
19 witnesses, that the continued custody of the child by the parent or Indian custodian is  
20 likely to result in serious emotional or physical damage to the child." *See also* 2015  
21 Guidelines, § D.3(a). The Amended Complaint alleges that Arizona law requires only a  
22 showing of "reasonable grounds," "probable cause," "reasonable efforts," or  
23 "preponderance of the evidence" at various stages of proceedings leading to foster care  
24 placement of children. It further alleges that "ICWA's higher burden of proof requires  
25 [the Department of Child Safety] to disregard to a greater extent the safety and security of  
26 children with Indian ancestry based solely on the race of these children."

27           The Amended Complaint alleges that C.C. was taken into protective custody after  
28 his biological mother was convicted of a felony. It alleges that A.D. and C.R. were taken  
into protective custody at birth. L.G., who shares the same biological mother as C.R.,

1 was taken into protective custody at the same time as C.R., and ICWA had no application  
2 to L.G. before C.R. was born. The Amended Complaint does not allege facts showing  
3 that foster care placement for any of the child Plaintiffs was delayed or that any of the  
4 child Plaintiffs was exposed to greater risk of harm because of ICWA’s higher  
5 evidentiary standard.

6 Thus, the Amended Complaint does not allege facts showing that any of the  
7 Plaintiffs suffered a concrete and particularized injury, actual or imminent, and fairly  
8 traceable to § 1912(e).

9 **4. Section 1912(f): Higher Evidentiary Standard for Termination**  
10 **of Parental Rights**

11 Section 1912(f) prohibits termination of parental rights “in the absence of a  
12 determination, supported by evidence beyond a reasonable doubt, including testimony of  
13 qualified expert witnesses, that the continued custody of the child by the parent or Indian  
14 custodian is likely to result in serious emotional or physical damage to the child.” *See*  
15 *also* 2015 Guidelines, § D.3(b). The Amended Complaint alleges that ICWA’s  
16 requirement of evidence “beyond a reasonable doubt” is greater than what would  
17 otherwise be required. Arizona law requires that the party seeking termination of  
18 parental rights establish statutory grounds by “clear and convincing evidence” and  
19 establish the best interests of the child by “a preponderance of the evidence.” The  
20 Amended Complaint alleges that the parental rights of the biological parents of A.D. and  
21 C.C. have been terminated, and the parental rights of the biological parents of C.R. and  
22 L.G. have not been terminated. It does not allege that the termination proceedings were  
23 affected by the evidentiary standard required by § 1912(f) in any way.

24 Thus, the Amended Complaint does not allege facts showing that any of the  
25 Plaintiffs suffered a concrete and particularized injury, actual or imminent, and fairly  
26 traceable to § 1912(f).

27 **5. Section 1915(a): Adoptive Placement Preferences**

28 The Amended Complaint alleges that the foster care/preadoptive and adoption  
placement preferences imposed by §§ 1915(a) and 1915(b) and by the 2015 Guidelines

1 §§ F.1, F.2, F.3, and F.4 “single out and treat differently children with Indian ancestry . . .  
 2 [and] the non-Indian adults involved in the care and upbringing of children with Indian  
 3 ancestry.” (Doc. 173 at 27, ¶ 115.) It also alleges that §§ 1915(a) and 1915(b) “violate  
 4 the substantive due process rights of children with Indian ancestry and those of adults  
 5 involved in their upbringing who have an existing family-like relationship with the child”  
 6 because each of them “deserves an individualized, race-neutral determination under  
 7 uniform standards when courts make foster/preadoptive care and adoption placement  
 8 decisions.” (*Id.* at 28, ¶ 121.)

9 Section 1915(a) requires:

10 In any adoptive placement of an Indian child under State law, a preference  
 11 shall be given, in the absence of good cause to the contrary, to a placement  
 12 with (1) a member of the child’s extended family; (2) other members of the  
 Indian child’s tribe; or (3) other Indian families.

13 Although ICWA does not define “good cause,” § F.4 of the 2015 Guidelines states: “The  
 14 good cause determination does not include an independent consideration of the best  
 15 interest of the Indian child because the preferences reflect the best interests of an Indian  
 16 child in light of the purposes of the Act.” 80 Fed. Reg. 10146, 10158.<sup>6</sup>

17 For all adoptive placements, Arizona law requires the Department of Child Safety  
 18 or an adoption agency to “place a child in an adoptive home that best meets the safety,  
 19 social, emotional, physical and mental health needs of the child.” A.R.S. § 8-103(C).  
 20 Other relevant factors for consideration include placement with the child’s siblings,  
 21 placement with a member of the child’s extended family or a person or foster parent who  
 22 has a significant relationship with the child, and established relationships between the  
 23 child and the prospective adoptive family. *Id.* Adoption proceedings include  
 24 certification of the adoptive parents, completion of a social study, a court hearing,

---

25  
 26 <sup>6</sup> The 2016 Guidelines, § H.4, state: “Congress determined that a placement with  
 27 the Indian child’s extended family or Tribal community will serve the child’s best interest  
 28 in most cases. A court may deviate from these preferences, however, when good cause  
 exists.” Section H.4 and 25 C.F.R. § 23.132 explain how a determination of “good  
 cause” to depart from the placement preferences should be made.

1 consideration of multiple factors, and judicial findings on the record regarding the best  
2 interests of the child pursuant to law.

3 The Amended Complaint does not allege that the Gila River Indian Community  
4 has proposed or likely will propose any adoptive placements under § 1915(a) for A.D. It  
5 does not allege that A.D.'s adoption has been delayed by § 1915(a)'s placement  
6 preferences.

7 The Amended Complaint alleges that C.C.'s adoption was delayed by the Navajo  
8 Nation's repeated efforts to find an adoption placement compliant with § 1915(a)'s  
9 preferences because M.C. and K.C. could not file a petition for adoption until the State  
10 court declared that there was good cause to deviate from ICWA's adoption placement  
11 preferences. It alleges that C.C. was repeatedly required to visit with strangers who were  
12 proposed as potential ICWA-compliant placements. But it does not allege facts, rather  
13 than mere conclusions, showing that C.C.'s adoption would have been completed more  
14 quickly and C.C. would not have been introduced to strangers if § 1915(a) did not apply.

15 The Amended Complaint alleges that the Gila River Indian Community has  
16 proposed and will continue to propose ICWA-compliant adoption placements for C.R.  
17 and L.G. and that but for the application of ICWA, C.R. and L.G. likely would have been  
18 cleared for adoption by P.R. and K.R. It alleges that C.R. and L.G. were placed together  
19 in foster care with P.R. and K.R., as required by Arizona law, because C.R. and L.G. are  
20 well-bonded siblings. The Amended Complaint does not allege facts, rather than mere  
21 conclusions, showing that the consolidated adoption proceeding for C.R. and L.G. would  
22 have been completed more quickly if § 1915(a) did not apply.

23 Thus, the Amended Complaint does not allege facts showing that any of the  
24 Plaintiffs suffered a concrete and particularized injury, actual or imminent, and fairly  
25 traceable to § 1915(a).

26 **6. Section 1915(b): Foster Care/Preadoptive Placement Preferences**

27 Section 1915(b) states:

28 Any child accepted for foster care or preadoptive placement shall be placed  
in the least restrictive setting which most approximates a family and in

1 which his special needs, if any, may be met. The child shall also be placed  
2 within reasonable proximity to his or her home, taking into account any  
3 special needs of the child. In any foster care or preadoptive placement, a  
4 preference shall be given, in the absence of good cause to the contrary, to a  
placement with—

- 5 (i) a member of the Indian child’s extended family;
- 6 (ii) a foster home licensed, approved, or specified by the Indian  
child’s tribe;
- 7 (iii) an Indian foster home licensed or approved by an authorized  
8 non-Indian licensing authority; or
- 9 (iv) an institution for children approved by an Indian tribe or  
10 operated by an Indian organization which has a program suitable to  
meet the Indian child’s needs.

11 The Amended Complaint alleges that A.D. was taken into protective custody at  
12 birth, A.D. was placed in foster care with S.H. and J.H., and they have taken care of A.D.  
13 ever since. It alleges that C.C. was taken into protective custody when he was less than  
14 one year old and he continuously remained in foster care with M.C. and K.C. for four  
15 years before they adopted him in November 2015. The Amended Complaint alleges that  
16 C.R. was taken into protective custody at birth and placed in foster care with K.R. and  
17 P.R. At the same time, C.R.’s half-sibling L.G. was placed in foster care with K.R. and  
18 P.R. The Amended Complaint does not allege any delay in, or effect on, the foster care  
19 placements of the child Plaintiffs caused by § 1915(b).

20 Thus, the Amended Complaint does not allege facts showing that any of the  
21 Plaintiffs suffered a concrete and particularized injury, actual or imminent, and fairly  
22 traceable to § 1915(b).

23 **7. Sections C.1, C.2, and C.3 of the 2015 Guidelines**

24 Count 6 of the Amended Complaint alleges that the BIA exceeded its authority by  
25 issuing §§ C.1, C.2, and C.3 of the 2015 Guidelines, which make transfer of jurisdiction  
26 available during all child custody proceedings, including preadoptive placement and  
27 adoptive placement proceedings. (Doc. 173 at 32.) Under 25 U.S.C. § 1911(b), the right  
28



1 to request a transfer to tribal jurisdiction is available only in proceedings for foster care  
2 placement or termination of parental rights.<sup>7</sup>

3 Section C.1(a) refers to “each distinct Indian child custody proceeding.” 80 Fed.  
4 Reg. 10146, 10156. Section C.1(b) states, “The right to request a transfer occurs with  
5 each proceeding” and provides an example involving only foster care placement and  
6 termination of parental rights. *Id.* Section C.1(c) states, “The right to request a transfer is  
7 available at any stage of an Indian child custody proceeding, including during any period  
8 of emergency removal.” *Id.* Section C.3(c) states: “In determining whether good cause  
9 [not to transfer] exists, the court may not consider whether the case is at an advanced  
10 stage or whether transfer would result in a change in the placement of the child . . . .” *Id.*  
11 These provisions are inconsistent with § 1911(b)’s limitation to proceedings for foster  
12 care placement and termination of parental rights.

13 However, the Amended Complaint does not allege that transfer was requested  
14 during a preadoptive or adoptive placement proceeding for C.C., C.R., or L.G. Although  
15 the Gila River Indian Community sought transfer of A.D.’s proceedings after termination  
16 of parental rights, the Amended Complaint does not allege that the Gila River Indian  
17 Community contended that the 2015 Guidelines authorized transfer of preadoptive and  
18 adoptive placement proceedings. Therefore, the Amended Complaint does not allege  
19 facts showing that any of the Plaintiffs suffered a concrete and particularized injury,  
20 actual or imminent, and fairly traceable to §§ C.1, C.2, and C.3 of the 2015 Guidelines.

21 Therefore, all of the pending motions to dismiss the Amended Complaint will be  
22 granted, and the Amended Complaint will be dismissed for lack of jurisdiction and lack  
23 of standing.

24 Plaintiffs have not sought leave to further amend their complaint, and leave to do  
25 so will not be granted. Although leave to amend a pleading should be freely given “when  
26 justice so requires,” Fed. R. Civ. P. 15(a)(2), courts should consider five factors: bad

---

27 <sup>7</sup> Consistent with § 1911(b), the 2016 Guidelines and 25 C.F.R. § 23.115 expressly  
28 limit the right to request a transfer to proceedings for foster care placement and  
termination of parental rights.

1 faith, undue delay, prejudice to the opposing party, futility of amendment, and whether  
2 the plaintiff has previously amended the complaint. *Johnson v. Buckley*, 356 F.3d 1067,  
3 1077 (9th Cir. 2004). Courts have “especially broad” discretion to deny leave to amend  
4 where the plaintiff already has had one or more opportunities to amend a complaint.  
5 *Ascon Props., Inc. v. Mobil Oil Co.*, 866 F.2d 1149, 1161 (9th Cir. 1989); *Moore v.*  
6 *Kayport Package Exp., Inc.*, 885 F.2d 531, 538 (9th Cir. 1989) (“Leave to amend need  
7 not be given if a complaint, as amended, is subject to dismissal.”).

8 Plaintiffs initiated this action on July 6, 2015, alleging a putative class so  
9 numerous that joinder of all members is impracticable, but despite being granted leave to  
10 amend, they have not named any plaintiffs with standing to challenge any provisions of  
11 ICWA or the 2015 Guidelines. Further leave to amend would cause undue delay and  
12 likely would be futile.

13 The legal questions Plaintiffs wish to adjudicate here in advance of injury to  
14 themselves will be automatically remediable for anyone actually injured. The very  
15 allegations of wrongfulness are that such injuries will arise in state court child custody  
16 proceedings, directly in the court processes or in actions taken by state officers under the  
17 control and direction of judges in those proceedings. Any true injury to any child or  
18 interested adult can be addressed in the state court proceeding itself, based on actual facts  
19 before the court, not on hypothetical concerns. If any Plaintiffs encounter future real  
20 harm in their own proceedings, the judge in their own case can discern the rules of  
21 decision. They do not have standing to have this Court pre-adjudicate for state court  
22 judges how to rule on facts that may arise and that may be governed by statutes or  
23 guidelines that this Court may think invalid.

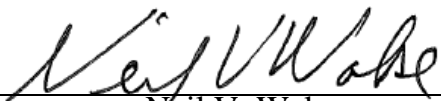
24 IT IS THEREFORE ORDERED that the Federal Defendants’ Motion to Dismiss  
25 First Amended Complaint (Doc. 178), the State Defendant’s Motion to Dismiss  
26 Plaintiffs’ First Amended Civil Rights Complaint for Declaratory, Injunctive, and Other  
27 Relief (Doc. 179), the Gila River Indian Community’s Motion to Dismiss (Doc. 217), and  
28 the Navajo Nation’s Amended Motion to Dismiss (Doc. 218) are granted.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IT IS FURTHER ORDERED that the First Amended Civil Rights Class Action Complaint for Declaratory, Injunctive, and Other Relief (Doc. 173) is dismissed for lack of standing.

IT IS FURTHER ORDERED that the Clerk of the Court enter judgment dismissing this action without prejudice for lack of jurisdiction and lack of standing.

Dated this 16th day of March, 2017.

  
\_\_\_\_\_  
Neil V. Wake  
Senior United States District Judge

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Scharf-Norton Center for Constitutional Litigation at the  
GOLDWATER INSTITUTE**  
Aditya Dynar (031583)  
500 E. Coronado Rd.  
Phoenix, Arizona 85004  
(602) 462-5000  
[litigation@goldwaterinstitute.org](mailto:litigation@goldwaterinstitute.org)

**COOPER & KIRK, PLLC**  
Michael W. Kirk (admitted *pro hac vice*)  
Brian W. Barnes (admitted *pro hac vice*)  
Harold S. Reeves (admitted *pro hac vice*)  
1523 New Hampshire Ave., N.W.  
Washington, D.C. 20036  
(202) 220-9600  
(202) 220-9601 (fax)  
*Attorneys for Plaintiffs*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

A.D., C.C., L.G., and C.R., by CAROL  
COGHLAN CARTER, and DR. RONALD  
FEDERICI, their next friends;  
S.H. and J.H., a married couple;  
M.C. and K.C., a married couple;  
K.R. and P.R., a married couple;  
for themselves and on behalf of a class of  
similarly-situated individuals,  
Plaintiffs,

vs.

KEVIN WASHBURN, in his official  
capacity as Assistant Secretary of Indian  
Affairs, BUREAU OF INDIAN AFFAIRS;  
SALLY JEWELL, in her official capacity as  
Secretary of the Interior, U.S.  
DEPARTMENT OF THE INTERIOR;  
GREGORY A. McKAY, in his official  
capacity as Director of ARIZONA  
DEPARTMENT OF CHILD SAFETY,  
Defendants.

No. CV-15-1259-PHX-NVW

**FIRST AMENDED CIVIL RIGHTS  
CLASS ACTION COMPLAINT  
FOR DECLARATORY,  
INJUNCTIVE, AND OTHER  
RELIEF**

## INTRODUCTION

1  
2           1.       By honoring the moral imperatives enshrined in our Constitution, this nation  
3 has successfully shed much of its history of legally sanctioned discrimination on the basis  
4 of race or ethnicity. We have seen in vivid, shameful detail how separate treatment is  
5 inherently unequal. *Brown v. Board of Education*, 347 U.S. 483, 495 (1954). There can be  
6 no law under our Constitution that creates and applies pervasive separate and unequal  
7 treatment to individuals based on a quantum of blood tracing to a particular race or  
8 ethnicity. This country committed itself to that principle when it ratified the Fourteenth  
9 Amendment and overturned *Dred Scott v. Sandford*, 60 U.S. 393 (1857), and when it  
10 abandoned *Plessy v. Ferguson*, 163 U.S. 537 (1896).

11           2.       In 1994 and again in 1996, Congress recognized that race and ethnicity  
12 should play no role in state-approved adoptions when it enacted the Multiethnic Placement  
13 Act, Pub. L. 103-382, §§ 551–553, *codified at* 42 U.S.C. § 5115a (1994), and the  
14 Interethnic Placement Act, Pub. L. 104-188, § 1808, *codified at* 42 U.S.C. §§ 671(a),  
15 674(d), 1996b (1996), which forbid discrimination in adoptions and foster care  
16 placements.

17           3.       Children with Indian ancestry, however, are still living in the era of *Plessy*  
18 *v. Ferguson*. Alone among American children, their adoption and foster care placements  
19 are determined not in accord with their best interests but by their ethnicity, as a result of a  
20 well-intentioned but profoundly flawed and unconstitutional federal law, the Indian Child  
21 Welfare Act (“ICWA”), *codified at* 25 U.S.C. §§ 1901–1963.

22           4.       This civil rights class action is filed by Plaintiffs baby girl A.D., baby boy  
23 C.C., baby girl L.G., and baby boy C.R., by Carol Coghlan Carter and Dr. Ronald Federici,  
24 their next friends, and S.H. and J.H., foster/adoptive parents of baby girl A.D., M.C. and  
25 K.C., adoptive parents of baby boy C.C., and P.R. and K.R., foster/adoptive parents of  
26 baby girl L.G. and baby boy C.R. They file this action on behalf of themselves and all off-  
27 reservation Arizona-resident children with Indian ancestry and all off-reservation  
28

1 Arizona-resident foster, preadoptive, and prospective adoptive parents in child custody  
2 proceedings involving children with Indian ancestry.

3 5. They seek a declaration by this Court that certain provisions of ICWA, and  
4 Guidelines issued by the Bureau of Indian Affairs (BIA), both facially and as applied,  
5 violate the United States Constitution. They also seek an injunction from this Court against  
6 the application of certain provisions of ICWA and the accompanying BIA Guidelines, and  
7 nominal damages under Title VI of the Civil Rights Act (42 U.S.C. § 2000d–2000d-7).

8 **JURISDICTION AND VENUE**

9 6. This Court has subject matter jurisdiction under 28 U.S.C. § 1331.

10 7. This Court is authorized to grant declaratory and injunctive relief under 5  
11 U.S.C. §§ 701 through 706, 28 U.S.C. §§ 2201 and 2202, 42 U.S.C. § 1983, Federal Rules  
12 of Civil Procedure (“FRCP”) 57 and 65, and by the general and equitable powers of the  
13 federal judiciary. This Court is authorized to grant nominal damages, and declaratory and  
14 injunctive relief under Title VI of the Civil Rights Act (42 U.S.C. §§ 2000d–2000d-7).

15 8. Venue is proper under 28 U.S.C. § 1391(b), (e).

16 **PARTIES**

17 9. Plaintiff A.D. is a citizen of the United States and the State of Arizona, and  
18 domiciled in the State of Arizona. Baby girl A.D. is approximately 1 year and 6 months  
19 old. Baby girl A.D. is an enrolled member of the Gila River Indian Community, a  
20 federally-recognized tribe. Parental rights of A.D.’s birth parents have already been  
21 terminated by the state court properly having jurisdiction over the matter. Baby girl A.D.,  
22 on information and belief, has more than 50% non-Indian blood.

23 10. Plaintiff C.C. is a citizen of the United States and the State of Arizona, and  
24 domiciled in the State of Arizona. Baby boy C.C. is 5 years old. Baby boy C.C. is an  
25 enrolled member of the Navajo Nation, a federally-recognized tribe. Parental rights of  
26 C.C.’s birth parents were terminated by the state court properly having jurisdiction over  
27 the matter. Adoption of C.C. by M.C. and K.C. was finalized by the state court properly  
28

1 having jurisdiction over the matter in November, 2015. Baby boy C.C., on information  
2 and belief, has more than 50% Hispanic blood.

3 11. Plaintiff L.G. is a citizen of the United States and of the State of Arizona,  
4 and domiciled in the State of Arizona. Baby girl L.G. is approximately 3.5 years old.  
5 Baby girl L.G., on information and belief, is not eligible for membership in the Pascua  
6 Yaqui Tribe of Arizona, a federally-recognized tribe. Parental rights of L.G.’s birth  
7 parents have not been terminated by the state court properly having jurisdiction over the  
8 matter. Baby girl L.G., on information and belief, has more than 50% non-Indian blood.

9 12. Plaintiff C.R., baby girl L.G.’s half-sibling, is a citizen of the United States  
10 and of the State of Arizona, and domiciled in the State of Arizona. Baby boy C.R. is  
11 approximately 1.5 years old. Baby boy C.R., on information and belief, is eligible for  
12 membership in and is a child of a member of, or is already an enrolled member of, the  
13 Gila River Indian Community, a federally-recognized tribe. Parental rights of C.R.’s birth  
14 parents have not been terminated by the state court properly having jurisdiction over the  
15 matter. Baby boy C.R., on information and belief, has more than 50% non-Indian blood.

16 13. Carol Coghlan Carter is a citizen of the United States and the State of  
17 Arizona, and domiciled in the State of Arizona. She is an attorney licensed to practice in  
18 the State of Arizona. She has practiced in the area of family law for several decades. In  
19 the course of her legal career, she has represented during all stages of child custody  
20 proceedings children, including children with Indian ancestry as their court-appointed  
21 guardian-ad-litem; birth parents, including birth parents with Indian ancestry; and  
22 foster/adoptive parents, including foster/adoptive parents with Indian ancestry and those  
23 in child custody proceedings involving children with Indian ancestry. She is “next friend”  
24 to baby girl A.D., baby boy C.C., baby girl L.G., and baby boy C.R., and all off-reservation  
25 children with Indian ancestry in the State of Arizona in child custody proceedings. *See*  
26 FRCP 17(c).

27 14. Dr. Ronald Federici is a citizen of the United States and the State of Virginia,  
28 and domiciled in the State of Virginia. He is a clinical neuropsychologist and clinical

1 psychopharmacologist. He has over two decades of experience completing complex  
2 neuropsychiatric evaluations of adults and children. He is a professional consultant to  
3 physicians, schools, mental health clinics, pediatric and adolescent medicine clinics. He  
4 has served as an expert witness in child custody proceedings throughout the United States  
5 and abroad. He conducts training and education in Clinical Neuropsychology throughout  
6 the United States, and in Europe, Eastern Europe, United Kingdom, Australia, Canada,  
7 Iceland, and China. He serves as President of the Care for Children International, Inc.,  
8 which is a humanitarian aid organization providing medical care, supplies, training and  
9 education to the Romanian Department of Child Protective Services. A short documentary  
10 on Dr. Federici's work in Romania is available at  
11 <https://www.youtube.com/watch?v=AC37HIWIP1I> (last visited February 18, 2016). He is  
12 "next friend" to baby girl A.D., baby boy C.C., baby girl L.G., and baby boy C.R., and all  
13 off-reservation children with Indian ancestry in the State of Arizona in child custody  
14 proceedings. *See* FRCP 17(c).

15 15. Plaintiffs S.H. and J.H. are foster/preadoptive parents of baby girl A.D.  
16 Plaintiffs S.H. and J.H., a married couple, are both citizens of the United States and the  
17 State of Arizona, and are residents of and are domiciled in the State of Arizona. Neither  
18 S.H. nor J.H. are enrolled members of a tribe or eligible for membership in an Indian tribe.  
19 S.H. and J.H. are the only family baby girl A.D. has ever known as she was placed in  
20 foster care with them since her birth. Their petition to adopt baby girl A.D. is pending  
21 before the state court properly having jurisdiction over the matter.

22 16. Plaintiffs M.C. and K.C., a married couple, are both citizens of the United  
23 States and the State of Arizona, and are residents of and are domiciled in the State of  
24 Arizona. Neither M.C. nor K.C. are enrolled members of a tribe or eligible for membership  
25 in an Indian tribe. M.C. and K.C. were foster parents to baby boy C.C. for approximately  
26 four years. M.C. and K.C. adopted baby boy C.C. in November, 2015.

27 17. Plaintiffs K.R. and P.R. are foster parents of baby girl L.G. and baby boy  
28 C.R. Plaintiffs K.R. and P.R., a married couple, are both citizens of the United States and



1 the State of Arizona, and are residents of and are domiciled in the State of Arizona. Neither  
2 K.R. nor P.R. are enrolled members of a tribe or eligible for membership in an Indian  
3 tribe. K.R. and P.R. are the only family baby boy C.R. has ever known as he was placed  
4 in foster care with them since birth. K.R. and P.R. have been foster parents to baby girl  
5 L.G. and baby boy C.R. for approximately 1.5 years and want to adopt L.G. and C.R.

6 18. Defendant Kevin Washburn is the Assistant Secretary of Indian Affairs of  
7 the Bureau of Indian Affairs (“BIA”). He has primary authority to enforce ICWA and the  
8 BIA Guidelines at issue. He is sued in his official capacity only.

9 19. Defendant Sally Jewell is the Secretary of the Interior, United States  
10 Department of the Interior. The Department of the Interior is the cabinet agency of which  
11 BIA is a part and which is assigned enforcement powers under ICWA and Title 25 of  
12 United States Code. She is sued in her official capacity only.

13 20. Defendant Gregory A. McKay is the Director of the Arizona Department of  
14 Child Safety (“DCS”). The Director has statutory duty under Ariz. Rev. Stat. (“A.R.S.”)  
15 § 8-451 *et seq.* to “protect children.” The Director is also required to “[e]nsure the  
16 department’s compliance with the Indian child welfare act of 1978 (P.L. 95-608; 92 Stat.  
17 3069; 25 United States Code §§ 1901 through 1963).” A.R.S. § 8-453(A)(20). He is sued  
18 in his official capacity only.

## 19 **FACTS COMMON TO ALL CLAIMS**

### 20 **I. Baby Girl A.D.**

21 21. DCS took baby girl A.D. into protective custody at birth as she was severely  
22 drug-exposed due to her biological mother’s ingestion of several controlled substances,  
23 and placed her with S.H. and J.H. They have taken care of baby girl A.D. ever since, and  
24 although she has some developmental delays due to her exposure to controlled substances,  
25 she has shown remarkable recovery from the deleterious effects of second-hand addiction  
26 under the loving care of S.H. and J.H.

27 22. A.D.’s biological mother named two possible birth fathers for baby girl A.D.  
28 Paternity tests on both ruled out the possibility that they were A.D.’s birth fathers.

1 Consequently, the state court severed parental rights of the birth mother and the absent  
2 birth father.

3 23. S.H. and J.H., as foster parents, have taken care of baby girl A.D. since birth.  
4 S.H. and J.H., along with their adopted son who has Indian ancestry, are the only family  
5 that baby girl A.D. has ever known. The tribe sought in state court a transfer of the case  
6 to tribal court. The state juvenile court denied the tribe's motion to transfer jurisdiction to  
7 tribal court and the tribe appealed. That appeal is now pending in the Arizona Court of  
8 Appeals Case No. JV16-0038. If the appellate court reverses the state trial court's decision  
9 and their case is transferred to tribal court, it would force A.D., S.H. and J.H., who do not  
10 have any contact with the tribal forum, to submit to that forum's jurisdiction over them.  
11 Such transfer and the resulting exercise of jurisdiction, if successful, would be solely based  
12 on baby girl A.D.'s race.

13 24. But for ICWA, A.D. would likely have been cleared for adoption by S.H.  
14 and J.H. If they are awarded adoption, they are willing to provide and encourage  
15 appropriate visitation and cultural acclimatization opportunities to A.D. DCS has and  
16 continues to follow, implement, and support the position that ICWA and the BIA  
17 Guidelines control all aspects of the state court child custody proceeding of A.D., S.H.,  
18 and J.H., including but not limited to the provisions challenged here. In A.D.'s child  
19 custody proceeding, all actions were taken and decisions reached because of A.D., S.H.,  
20 and J.H.'s race.

## 21 **II. Baby Boy C.C.**

22 25. DCS took baby boy C.C. into protective custody when he was less than one  
23 year old when his biological mother was convicted of a non-drug related felony. His birth  
24 father is unknown. The birth mother is on record saying she supports baby boy C.C.'s  
25 adoption by M.C. and K.C.

26 26. The Navajo Nation repeatedly proposed alternative ICWA-compliant  
27 placements, all of which turned out to be inappropriate for placement of baby boy C.C.  
28 Baby boy C.C.'s extended family members expressly declined to have him placed with

1 them. Other ICWA-compliant placements the tribe proposed also declined to have baby  
2 boy C.C. placed with them. The tribe repeatedly asked for additional opportunities from  
3 state court to find other ICWA-compliant placements. Consequently, baby boy C.C.  
4 continuously remained in foster care with M.C. and K.C. for four years. M.C. and K.C.  
5 were not able to file a petition for adoption until the state court declared that baby boy  
6 C.C. is available for adoption and that there was good cause to deviate from ICWA's  
7 adoption placement preferences.

8         27. Each time the tribe proposed an ICWA-compliant placement, pursuant to a  
9 court-supervised and DCS-supported case plan, M.C. and K.C. had to drive each week  
10 with baby boy C.C., sometimes over 100 miles, to visit with the proposed placement to  
11 give baby boy C.C. an opportunity to bond with the proposed placement until that  
12 placement became unavailable for any reason. Baby boy C.C. calls M.C. and K.C.  
13 "mommy" and "daddy," but he was reminded by some proposed placements that M.C.  
14 and K.C. are not his "mommy" and "daddy." This caused significant emotional and  
15 psychological harm to baby boy C.C. who, through no fault of his own, had to leave the  
16 security of his home and visit with strangers solely because he was born with Indian  
17 ancestry.

18         28. Due to the application of ICWA, baby boy C.C. had languished in foster  
19 care for approximately four years. But for ICWA, baby boy C.C. would have likely been  
20 cleared for adoption by M.C. and K.C.

21         29. M.C. and K.C. were not granted intervention in the dependency matter of  
22 C.C.

23         30. In November 2015, after this lawsuit was filed, the state court properly  
24 having jurisdiction over the matter cleared C.C., with DCS and Navajo Nation consent,  
25 for adoption by M.C. and K.C.

26         31. The Indian Child Welfare Act applied to all aspects of C.C.'s child custody  
27 proceeding. All actions that delayed or denied C.C.'s adoption by M.C. and K.C. were  
28

1 taken because of C.C., M.C., and K.C.'s race. DCS continued to follow, enforce and  
2 support the application of ICWA in C.C.'s child custody proceeding.

3 **III. Baby Girl L.G. and Baby Boy C.R.**

4 32. L.G. and C.R. are siblings who have the same birth mother but different  
5 birth fathers. L.G. was born in August, 2012, C.R. in August, 2014. During C.R.'s  
6 pregnancy, the birth mother tested positive for several controlled substances. Baby boy  
7 C.R. was born nine weeks premature, was drug-exposed when born, and spent three weeks  
8 in a ventilator. He is determined to be medically fragile. In or about August 2014, DCS  
9 took baby girl L.G. and baby boy C.R. into protective custody and placed the siblings in  
10 the care of P.R. and K.R. Thus, DCS took L.G. into protective custody when she was about  
11 2 years old; DCS took C.R. into protective custody at birth. P.R. and K.R. is the only  
12 family that baby boy C.R. has ever known; L.G., on information and belief, lived with her  
13 birth mother before she was placed in the care of P.R. and K.R. If they are awarded  
14 adoption, P.R. and K.R. are willing to provide and encourage appropriate visitation and  
15 cultural acclimatization opportunities to L.G. and C.R.

16 33. Both L.G. and C.R.'s birth fathers are known. On information and belief,  
17 both are in federal prison on conviction for violent felonies. L.G. and C.R.'s birth mother  
18 and maternal grandmother were arrested on charges of shoplifting. On information and  
19 belief, the maternal grandmother was given a two-year prison sentence and the birth  
20 mother is currently on probation.

21 34. L.G. and C.R.'s birth mother, on information and belief, is a member of the  
22 Gila River Indian Community with 25% Indian blood.

23 35. After L.G. and C.R. were placed in the foster care of P.R. and K.R., L.G.'s  
24 birth father, on information and belief, tried to obtain membership in the Pascua Yaqui  
25 Tribe, a federally-recognized tribe, but was unable to obtain membership. Consequently,  
26 L.G. is not eligible for membership in, nor is she a child of a member of, the Pascua Yaqui  
27 Tribe. L.G. is also not eligible for membership in, nor is she a member of, the Gila River  
28 Indian Community.

1           36.     C.R.'s birth mother and birth father are members of the Gila River Indian  
2 Community. C.R. is eligible for membership in, and is a child of a member of, the Gila  
3 River Indian Community.

4           37.     Initially, the case management plan for L.G. and C.R. was reunification with  
5 their birth mother. Due to C.R.'s low birth weight and medical complications due to in-  
6 utero exposure to controlled substances, DCS consented to, and the state court authorized,  
7 one weekly 4-hour-long visit with the birth mother that is supervised by DCS employees.  
8 In September 2015, the state court properly having jurisdiction over the child custody  
9 proceeding, changed the case management plan to severance. The parental rights of L.G.  
10 and C.R.'s birth parents have not been terminated.

11           38.     Foster parents P.R. and K.R. are not party intervenors in the state child  
12 custody proceeding of L.G. and C.R. Plaintiffs L.G., C.R., K.R. and P.R. do not have any  
13 contacts or ties with any tribal forum.

14           39.     The Gila River Indian Community has and will continue to propose  
15 alternative ICWA-compliant homes for C.R. in the consolidated child custody proceeding  
16 of L.G. and C.R. for the sole purpose of ensuring that C.R.'s child custody proceeding is  
17 subject to ICWA and the BIA Guidelines. DCS has and continues to follow, implement,  
18 and support the position that ICWA and the BIA Guidelines control all aspects of the state  
19 court child custody proceeding of C.R., including but not limited to the provisions  
20 challenged here.

21           40.     L.G. has Indian ancestry but is not an "Indian child" within the meaning of  
22 ICWA. However, she is discriminated against in her consolidated child custody  
23 proceeding because her half-sibling, C.R., is an "Indian child" within the meaning of  
24 ICWA. L.G. has known C.R. since birth, both share a strong sibling bond, and both  
25 consider K.R. and P.R. as *de facto* and psychological parents. Both call K.R. and P.R. their  
26 "mommy" and "daddy."

27           41.     Arizona state policy, mandated by state law, is to place well-bonded siblings  
28 with the same foster and adoptive parents. *See, e.g.*, A.R.S. § 8-513(D). But for ICWA

1 and the federal and state statutes and Guidelines that implement it, L.G. and C.R. would  
2 be placed together due to their bonding and attachment, pursuant to state law.

3 42. The relevant state court properly having jurisdiction over the matter has not  
4 declared L.G. and C.R. as available for adoption. L.G. and C.R. have continuously  
5 remained in foster care with P.R. and K.R. for about one year and six months. P.R. and  
6 K.R. cannot file a petition for adoption until the state court declares that L.G. and C.R. are  
7 available for adoption and that there is good cause to deviate from ICWA's adoption  
8 placement preferences.

9 43. Due to the application of ICWA, L.G. and C.R. have been languishing in  
10 foster care for more than one and a half years. But for ICWA, they would likely have been  
11 cleared for adoption by P.R. and K.R.

12 **IV. All Plaintiffs**

13 44. But for ICWA, a strong likelihood exists that these families – baby girl A.D.,  
14 and her foster/preadoptive parents, S.H. and J.H., baby boy C.C., and his adoptive parents  
15 M.C. and K.C., and L.G. and C.R., and their foster parents, K.R. and P.R. – would be  
16 allowed to become permanent under race-neutral Arizona laws permitting individualized  
17 race-neutral evaluation by state court of what is in the children's best interests. But under  
18 ICWA, these families are subjected to different and more onerous procedural and  
19 substantive provisions that are based solely on the race of the children and the adults  
20 involved, which lead to severe disruption in their lives contrary to the children's best  
21 interests.

22 45. In many instances, children subject to ICWA are removed from caring,  
23 loving homes and forced into placements, which sometimes leads to abuse, psychological  
24 harm, or even physical trauma and death.

25 46. In many instances, prospective adoptive parents who otherwise would be  
26 allowed to adopt children they have raised since infancy and grown to love are deprived  
27 of the opportunity to form permanent families as a result of ICWA.

28



1 to this Amended Complaint, and available at  
2 [https://dcs.az.gov/sites/default/files/SEMIANNUAL-CHILD-WELFARE-](https://dcs.az.gov/sites/default/files/SEMIANNUAL-CHILD-WELFARE-REPORTING-REQUIREMENTS-4-15-9-15_FINAL-Revised.pdf)  
3 [REPORTING-REQUIREMENTS-4-15-9-15\\_FINAL-Revised.pdf](https://dcs.az.gov/sites/default/files/SEMIANNUAL-CHILD-WELFARE-REPORTING-REQUIREMENTS-4-15-9-15_FINAL-Revised.pdf) (last visited March 2,  
4 2016), reports that as of September 30, 2015 there were 1,506 American Indian children  
5 in out-of-home care in Arizona. *Id.* at 42. The number of foster, preadoptive, and  
6 prospective adoptive parents of these children is similarly numerous. Their identities are  
7 easily ascertainable through DCS records that are not open for inspection to the public.  
8 This putative class is so numerous that joinder of all members is impracticable. *See* FRCP  
9 23(a)(1).

10 52. There are questions of law or fact common to the class, namely, the facial  
11 and as-applied constitutionality of several provisions of ICWA and accompanying  
12 Guidelines to the members of the class. *See* FRCP 23(a)(2).

13 53. The circumstances of baby girl A.D., S.H. and J.H., baby boy C.C., M.C.  
14 and K.C. and baby girl L.G., baby boy C.R., P.R. and K.R., are typical of children with  
15 Indian ancestry and other foster, preadoptive and prospective adoptive families of children  
16 with Indian ancestry. *See* FRCP 23(a)(3).

17 54. The named plaintiffs will fairly and adequately protect the interests of the  
18 class. *See* FRCP 23(a)(4).

19 55. Plaintiffs' attorneys are experienced in representing litigants before federal  
20 courts. Plaintiffs' counsel include nationally recognized constitutional lawyers who have  
21 litigated extensively at every level of the federal judiciary. Plaintiffs' attorneys are well  
22 qualified to be appointed class counsel by this Court.

23 56. Separate actions by individual class members would create the risk of  
24 inconsistent or incompatible standards of conduct for the defendants, and separate actions  
25 by individual class members would substantially impair their ability to protect their  
26 interests. *See* FRCP 23(b)(1).

27  
28





1 exclusive or concurrent jurisdiction. *See, e.g., Nielson v. Ketchum*, 640 F.3d 1117, 1120  
2 (10th Cir. 2011) (quoting Chapter 2, Section 11A of the Cherokee Nation Citizenship Act  
3 which automatically admits a child as citizen of the Cherokee Nation at birth “for the  
4 specific purpose of protecting the rights of the Cherokee Nation under the [ICWA]”  
5 (brackets in original)).

6 63. The Guidelines for State Courts and Agencies in Indian Child Custody  
7 Proceedings, 80 Fed. Reg. 10146, 10153, B.4(d)(iii) (February 25, 2015), state, “In the  
8 event the child is eligible for membership in a tribe but is not yet a member of any tribe,  
9 the agency should take the steps necessary to obtain membership for the child in the tribe  
10 that is designated as the Indian child’s tribe.”

11 64. “Agency” is defined in the New Guidelines as “a private State-licensed  
12 agency or public agency and their employees, agents or officials involved in and/or  
13 seeking to place a child in a child custody proceeding.” 80 Fed. Reg. at 10151, A.2.

14 65. ICWA defines “child custody proceeding” to include “foster care  
15 placement,” “termination of parental rights,” “preadoptive placement,” and “adoptive  
16 placement.” 25 U.S.C. § 1903(1).

17 66. “Foster care placement” is defined as “any action removing an Indian child  
18 from its parent or Indian custodian for temporary placement in a foster home or institution  
19 or the home of a guardian or conservator where the parent or Indian custodian cannot have  
20 the child returned upon demand, but where parental rights have not been terminated.” 25  
21 U.S.C. § 1903(1)(i).

22 67. “Termination of parental rights” is defined as “any action resulting in the  
23 termination of the parent-child relationship.” 25 U.S.C. § 1903(1)(ii).

24 68. “Preadoptive placement” is defined as “the temporary placement of an  
25 Indian child in a foster home or institution after the termination of parental rights, but prior  
26 to or in lieu of adoptive placement.” 25 U.S.C. § 1903(1)(iii).

27  
28

1           69. “Adoptive placement” is defined as “the permanent placement of an Indian  
2 child for adoption, including any action resulting in a final decree of adoption.” 25 U.S.C.  
3 § 1903(1)(iv).

4           70. “Child custody proceeding,” as defined, “shall not include a placement  
5 based upon an act which, if committed by an adult, would be deemed a crime or upon an  
6 award, in a divorce proceeding, of custody to one of the parents.” 25 U.S.C. § 1903(1).

## 7 **II. BIA Guidelines**

8           71. The BIA first issued Guidelines in November of 1979. Guidelines for State  
9 Courts; Indian Child Custody Proceedings, 44 Fed. Reg. 67584 (November 26, 1979)  
10 (“Old Guidelines” or “1979 Guidelines”). On February 25, 2015, the BIA issued new  
11 Guidelines to “supersede and replace” the 1979 Guidelines. Guidelines for State Courts  
12 and Agencies in Indian Child Custody Proceedings, 80 Fed. Reg. 10146, 10147 (February  
13 25, 2015) (“New Guidelines”, “2015 Guidelines”, or “BIA Guidelines”).

## 14 **III. The Jurisdiction-Transfer Provision**

15           72. ICWA requires state courts to “transfer” “foster care placement” or  
16 “termination of parental rights” “proceeding[s] to the jurisdiction of the tribe” of “an  
17 Indian child not domiciled or residing within the reservation of the Indian child’s tribe”  
18 “in the absence of good cause to the contrary,” and “absent objection by either parent,” if  
19 the “parent or the Indian custodian or the Indian child’s tribe” petitions for such transfer  
20 and the tribal court does not decline such transfer. 25 U.S.C. § 1911(b) (“jurisdiction-  
21 transfer provision”); 80 Fed. Reg. at 10156, C.2. The New Guidelines, however, state,  
22 “The right to request a transfer is available at *any stage* of an Indian *child custody*  
23 *proceeding*, including during any period of emergency removal.” 80 Fed. Reg. at 10156,  
24 C.1(c) (emphasis added).

25           73. Whereas ICWA’s jurisdiction-transfer provision is available to transfer only  
26 foster care placement and termination of parental rights proceedings to the jurisdiction of  
27 the tribe, the BIA, in the New Guidelines, extended the jurisdiction-transfer provision to  
28 all child custody proceedings.

1           74. “Good cause” to not transfer a foster care placement or termination of  
2 parental rights proceeding to tribal court is not defined in ICWA. The New Guidelines,  
3 however, state:

4                   In determining whether good cause exists, the court may not  
5 consider whether the case is at an advanced stage or whether  
6 transfer would result in a change in the placement of the child  
7 because the Act created concurrent, but presumptively, tribal  
8 jurisdiction over proceedings involving children not residing  
9 or domiciled on the reservation, and seeks to protect, not only  
10 the rights of the Indian child as an Indian, but the rights of  
11 Indian communities and tribes in retaining Indian children.  
12 Thus, whenever a parent or tribe seeks to transfer the case it is  
13 presumptively in the best interest of the Indian child,  
14 consistent with the Act, to transfer the case to the jurisdiction  
15 of the Indian tribe. [¶] In addition, in determining whether  
16 there is good cause to deny the transfer, the court may not  
17 consider: (1) The Indian child’s contacts with the tribe or  
18 reservation; (2) Socio-economic conditions or any perceived  
19 inadequacy of tribal or Bureau of Indian Affairs social  
20 services or judicial systems; or (3) the tribal court’s  
21 prospective placement for the Indian child.

22 80 Fed. Reg. at 10156, C.3(c)–(d).

23           75. Under uniform Arizona law, when deciding whether to transfer a foster care  
24 placement or termination of parental rights proceeding to some other jurisdiction, an  
25 Arizona state court “that has made a child custody determination” has “exclusive,  
26 continuing jurisdiction over the determination until” either one of the two options is true:  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1. A court of this state determines that neither the child, nor the child and one parent, nor the child and a person acting as a parent have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child’s care, protection, training and personal relationships.
2. A court of this state or a court of another state determines that the child, the child’s parents and any person acting as a parent do not presently reside in this state.

A.R.S. § 25-1032(A).

76. Thus, while Arizona law looks at the litigants’ contacts with the forum in deciding whether to transfer a foster care placement or termination of parental rights proceeding to some other jurisdiction, ICWA and the New Guidelines explicitly instruct courts to not take into account the litigants’ contacts with the tribal forum.

77. The clear and convincing evidence standard is applied in Arizona to determine whether good cause exists to deviate from ICWA’s *foster care placement preferences* of 25 U.S.C. § 1915(b). *Gila River Indian Community v. Department of Child Safety*, 363 P.3d 148 (2015). The state trial court in baby girl A.D.’s case, however, concluded that the same clear and convincing evidence standard must be met in order to establish good cause to deviate from ICWA’s *jurisdiction-transfer provision*, 25 U.S.C. § 1911(b). *Contra Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 839 (9th Cir. 1986) (proponent must establish personal jurisdiction or lack thereof by preponderance of the evidence).

**IV. The Active Efforts Provision**

78. Further, ICWA states that “[a]ny party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that *active efforts* have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.” 25 U.S.C. § 1912(d) (emphasis added) (“active efforts provision”).

79. The New Guidelines state: “*Active efforts* are intended primarily to maintain and reunite an Indian child with his or her family or tribal community and constitute more

1 than reasonable efforts as required by Title IV-E of the Social Security Act (42 U.S.C.  
2 671(a)(15))... ‘Active efforts’ are separate and distinct from requirements of the Adoption  
3 and Safe Families Act (ASFA), 42 U.S.C. 1305. ASFA’s exceptions to reunification  
4 efforts do not apply to ICWA proceedings.” 80 Fed. Reg. at 10150–51, A.2 (emphasis in  
5 original). The ASFA exceptions provide that the reasonable efforts provision is  
6 *inapplicable* if there are “aggravated circumstances” such as “abandonment, torture,  
7 chronic abuse, and sexual abuse.” 42 U.S.C. § 671(a)(15)(D). But because these  
8 exceptions do not apply under the “active efforts” provision, active efforts are required to  
9 be taken to reunify children deemed Indian with their family or members of the tribal  
10 community even when the children were abandoned, tortured, chronically abused or  
11 sexually abused by those individuals.

12 80. DCS, under the active efforts provision, is required to “[i]dentify[], notify[],  
13 and invit[e] representatives of the Indian child’s tribe to participate” in the active efforts  
14 to reunite the Indian child with the child’s “family” and “tribal community.” New  
15 Guidelines, 80 Fed. Reg. at 10150, A.2.

16 81. DCS, under the active efforts provision, is required to “[t]ak[e] into account  
17 the Indian child’s tribe’s prevailing social and cultural conditions and way of life” even in  
18 situations where the child or the child’s parents have never been exposed to or followed  
19 the tribe’s prevailing social and cultural conditions or way of life. *Id.* DCS is also required  
20 “to assure cultural connections,” “[s]upport[] regular visits and trial home visits of the  
21 Indian child during any period of removal,” and “[o]ffer[] and employ[] all available and  
22 culturally appropriate family preservation strategies.” *Id.*

23 82. The New Guidelines provide details on when the requirement for active  
24 efforts begins and what actions an agency and State court must take in order to determine  
25 whether a child is an Indian child and how to comply with the active efforts requirement.  
26 80 Fed. Reg. at 10152–153, A.3, B.1–B.2, B.4, B.8, D.2. The New Guidelines provide no  
27 details on when the requirement for active efforts ends; consequently, the active efforts  
28 provision remains applicable until the adoption is finalized. Additionally, the foster

1 placement preferences and adoption placement preferences require DCS to engage in  
2 active efforts every time the tribe proposes a new ICWA-compliant placement.

3 83. The New Guidelines require DCS to “treat the child as an Indian child,  
4 unless and until it is determined that the child is not a member or is not eligible for  
5 membership in an Indian tribe,” “[i]f there is any reason to believe the child is an Indian  
6 child.” 80 Fed. Reg. at 10152, A.3(d).

7 84. The New Guidelines require DCS to engage in active efforts “from the  
8 moment the possibility arises that ... the Indian child [will] be placed outside the custody  
9 of either parent or Indian custodian” and also “while investigating” whether ICWA applies  
10 to a particular child. 80 Fed. Reg. at 10152, B.1(a)–(b).

11 85. If a child is suspected to be an Indian child, DCS may be required to provide  
12 “[g]enograms or ancestry charts for both parents, ... maternal and paternal grandparents  
13 and great grandparents or Indian custodians; birthdates; ... tribal affiliation including all  
14 known Indian ancestry for individuals listed on the charts[.]” New Guidelines, 80 Fed.  
15 Reg. at 10152, B.2(b)(1)(i).

16 86. “In the event the child is eligible for membership in a tribe but is not yet a  
17 member of any tribe,” the New Guidelines require DCS to “take the steps necessary to  
18 obtain membership for the child in the tribe that is designated as the Indian child’s tribe.”  
19 80 Fed. Reg. at 10153, B.4(d)(iii).

20 87. In emergency removal situations where DCS “knows or has reason to know”  
21 that a child is an Indian child, DCS is required to “[t]reat the child as an Indian child until  
22 the court determines that the child is not an Indian child.” New Guidelines, 80 Fed. Reg.  
23 at 10155, B.8(c)(1).

24 88. Pursuant to 42 U.S.C. § 671(a)(15), as amended by ASFA, the “reasonable  
25 efforts” standard is pervasive under Arizona Law. *See, e.g.*, A.R.S. §§ 8-513 (foster care  
26 placement), 8-522 (dependency actions), 8-825 (preliminary protective hearing), 8-829  
27 (same), 8-843 (initial dependency hearing), 8-845 (dependency determination), 8-846  
28 (same), 8-862 (permanency hearing).

1           89.     Whereas “active efforts” are required not only to “maintain and reunite an  
2 Indian child with his or her family” but also with the child’s “tribal community,” New  
3 Guidelines, 80 Fed. Reg. at 10150, A.2, “reasonable efforts” under Arizona law are  
4 required only to maintain and reunite the child with the child’s family. *See, e.g.*, A.R.S. §  
5 8-522(E)(3).

6           90.     Arizona DCS applies the active efforts provision to children with Indian  
7 ancestry, and the “reasonable efforts” provision to all other children. The New Guidelines  
8 explicitly state that the active efforts provision is “more than” the reasonable efforts  
9 provision. Consequently, children with Indian ancestry are singled out and afforded  
10 separate, unequal treatment resulting in delayed resolution of child custody proceedings  
11 of children with Indian ancestry, based solely on their race.

#### 12     **V.     Burden of Proof in Foster Care Placement Orders**

13           91.     ICWA further requires that “No foster care placement may be ordered in [an  
14 involuntary] proceeding in the absence of a determination, supported by clear and  
15 convincing evidence, including testimony of qualified expert witnesses, that the continued  
16 custody of the child by the parent or Indian custodian is likely to result in serious emotional  
17 or physical damage to the child.” 25 U.S.C. § 1912(e).

18           92.     The New Guidelines state: “The court may not issue an order effecting a  
19 foster care placement of an Indian child unless clear and convincing evidence is presented,  
20 including the testimony of one or more qualified expert witnesses, demonstrating that the  
21 child’s continued custody with the child’s parents or Indian custodian is likely to result in  
22 serious harm to the child.” 80 Fed. Reg. at 10156, D.3(a).

23           93.     The clear and convincing evidence standard is applied in Arizona to  
24 determine whether good cause exists to deviate from ICWA’s foster care placement  
25 preferences. *Gila River Indian Community v. Department of Child Safety*, 363 P.3d 148  
26 (2015).

27           94.     Under Arizona law, to take a child into temporary custody, there must be a  
28 showing that “reasonable grounds exist to believe that temporary custody is clearly



1 necessary to protect the child from suffering abuse or neglect” and that “probable cause  
2 exists to believe” that, inter alia, the child is or will imminently become a victim of abuse  
3 or neglect, or is suffering from serious physical or emotional injury. A.R.S. § 8-821(A)–  
4 (B); § 8-824(F) (“The petitioner has the burden of presenting evidence as to whether there  
5 is probable cause to believe that continued temporary custody is clearly necessary to  
6 prevent abuse or neglect pending the hearing on the dependency petition”); A.R.S. § 8-  
7 843 (“reasonable efforts” standard in initial dependency hearings); A.R.S. § 8-844  
8 (“preponderance of the evidence” standard in dependency adjudication hearings).

9 95. Thus, ICWA requires a showing of clear and convincing evidence whereas  
10 Arizona law requires a showing of “reasonable grounds,” “probable cause,” “reasonable  
11 efforts,” or “preponderance of the evidence” at various stages of proceedings leading to  
12 foster care placement of children. Consequently, ICWA’s higher burden of proof requires  
13 DCS to disregard to a greater extent the safety and security of children with Indian  
14 ancestry based solely on the race of these children.

## 15 **VI. Burden of Proof in Termination of Parental Rights Orders**

16 96. ICWA requires that “No termination of parental rights may be ordered in  
17 [an involuntary] proceeding in the absence of a determination, supported by evidence  
18 beyond a reasonable doubt, including testimony of qualified expert witnesses, that the  
19 continued custody of the child by the parent or Indian custodian is likely to result in serious  
20 emotional or physical damage to the child.” 25 U.S.C. § 1912(f).

21 97. The New Guidelines state: “The court may not order a termination of  
22 parental rights unless the court’s order is supported by evidence beyond a reasonable  
23 doubt, supported by the testimony of one or more qualified expert witnesses, that  
24 continued custody of the child by the parent or Indian custodian is likely to result in serious  
25 harm to the child.” 80 Fed. Reg. at 10156, D.3(b).

26 98. Under Arizona law, “Arizona’s statutes require that the party seeking  
27 termination of parental rights establish only the statutory grounds of section 8-533 by clear  
28 and convincing evidence and establish the best interests of the child by a preponderance

1 of the evidence.” *Kent K. v. Bobby M.*, 110 P.3d 1013, 1018 (Ariz. 2005) (interpreting  
2 A.R.S. §§ 8-533, 8-537).

3 99. Thus, ICWA requires a showing of beyond a reasonable doubt whereas  
4 Arizona law requires use of the clear and convincing evidence standard in termination of  
5 parental rights proceedings. Consequently, ICWA’s higher burden of proof, which  
6 explicitly does not take into account the best interests of the child, places greater burdens  
7 on children with Indian ancestry than does Arizona law uniformly applied to all other  
8 children. This separate, unequal treatment of children with Indian ancestry is based solely  
9 on the child’s race.

10 **VII. Foster/Preadoptive Care Placement Preferences**

11 100. Under ICWA:

In any foster care or preadoptive placement, a preference shall be given, *in the absence of good cause to the contrary*, to a placement with—

- 13 (i) a member of the Indian child’s extended family;
- 14 (ii) a foster home licensed, approved, or specified by the Indian child’s tribe;
- 15 (iii) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
- 16 (iv) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child’s needs.

17  
18 25 U.S.C. § 1915(b) (emphasis added).

19 101. The New Guidelines state:

20 The agency seeking a preadoptive, adoptive or foster care placement of an Indian child *must always follow* the placement preferences. If the agency determines that any of the preferences cannot be met, the agency must demonstrate through clear and convincing evidence that a diligent search has been conducted to seek out and identify placement options that would satisfy the placement preferences specified in sections F.2 or F.3 of these guidelines, and explain why the preferences could not be met.

21  
22  
23  
24  
25 80 Fed. Reg. at 10157, F.1(b) (emphasis added).

26 102. Although “good cause” to not apply the foster care placement preferences  
27 is not defined in ICWA, the New Guidelines state:

28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

(a) If any party asserts that good cause not to follow the placement preferences exists, the reasons for such belief or assertion must be stated on the record or in writing and made available to the parties to the proceeding and the Indian child's tribe.

(b) The party seeking departure from the preferences bears the burden of proving by clear and convincing evidence the existence of "good cause" to deviate from the placement preferences.

(c) A determination of good cause to depart from the placement preferences must be based on one or more of the following considerations:

(1) The request of the parents, if both parents attest that they have reviewed the placement options that comply with the order of preference.

(2) The request of the child, if the child is able to understand and comprehend the decision that is being made.

(3) The extraordinary physical or emotional needs of the child, such as specialized treatment services that may be unavailable in the community where families who meet the criteria live, as established by testimony of a qualified expert witness; provided that extraordinary physical or emotional needs of the child does not include ordinary bonding or attachment that may have occurred as a result of a placement or the fact that the child has, for an extended amount of time, been in another placement that does not comply with the Act. *The good cause determination does not include an independent consideration of the best interest of the Indian child* because the preferences reflect the best interests of an Indian child in light of the purposes of the Act.

(4) The unavailability of a placement after a showing by the applicable agency in accordance with section F.1, and a determination by the court that active efforts have been made to find placements meeting the preference criteria, but none have been located. For purposes of this analysis, a placement may not be considered unavailable if the placement conforms to the prevailing social and cultural standards of the Indian community in which the Indian child's parent or extended family resides or with which the Indian child's parent or extended family members maintain social and cultural ties.

(d) The court should consider only whether a placement in accordance with the preferences meets the physical, mental and emotional needs of the child; and may not depart from the preferences based on the socio-economic status of any placement relative to another placement.

80 Fed. Reg. at 10158, F.4 (emphasis added).

103. The standard applied to all other children in Arizona is markedly different from the standard applied to children with Indian ancestry. For foster care placements, Arizona courts look at whether there was reasonable evidence to find that placing a child with the foster family instead of an extended family member was in the child's "best

1 interests.” *Antonio M. v. Ariz. Dept. of Econ. Sec.*, 214 P.3d 1010, 1012 (Ariz. App. 2009).  
2 Courts in such situations also give weight to the fact that “the foster parents wished to  
3 adopt [the child].” *Id.* See also *Antonio P. v. Ariz. Dept. of Econ. Sec.*, 187 P.3d 1115,  
4 1117 (Ariz. App. 2008) (analyzing what is in the child’s best interest in foster care  
5 placements and giving weight to the fact that the child had an “undeniabl[y]” “longer  
6 relationship” with one placement than with the other).

### 7 **VIII. Adoption Placement Preferences**

8 104. Under ICWA,

9 In any adoptive placement of an Indian child under State law,  
10 a preference shall be given, *in the absence of good cause to*  
11 *the contrary*, to a placement with  
12 (1) a member of the child’s extended family;  
(2) other members of the Indian child’s tribe; or  
(3) other Indian families.

13 25 U.S.C. § 1915(a).(emphasis added).

14 105. The New Guidelines require state courts to follow ICWA’s adoption  
15 placement preferences. 80 Fed. Reg. at 10157, F.1(b) (“The agency seeking a[n] ...  
16 adoptive ... placement of an Indian child *must always follow* the placement preferences”)  
17 (emphasis added).

18 106. Although “good cause” to not apply the adoption placement preferences is  
19 not defined in ICWA, the New Guidelines, as reproduced above, specifically state that the  
20 “good cause determination does not include an independent consideration of the best  
21 interest of the Indian child because the preferences reflect the best interests of an Indian  
22 child in light of the purposes of the Act.” 80 Fed. Reg. at 10158, F.4.

23 107. Due to the mandatory language of the New Guidelines, there is an inherent  
24 conflict between the duty of DCS, an “agency” within the meaning of the New Guidelines,  
25 to “protect children” and its application of ICWA to children with Indian ancestry.

26 108. The placement preferences, as applied under the New Guidelines, do not  
27 look to the interests-of-the-child factors that state courts have traditionally applied in  
28 entering foster care placement, preadoption and adoption orders, and thereby deprive

1 children with Indian ancestry of an individualized race-neutral determination that all other  
2 children enjoy under state law.

3 109. States cannot disregard a child's unique background in making an  
4 individualized and race-neutral foster, preadoptive or adoptive assessment, and in  
5 terminating parental rights. But the states cannot also turn a blind eye to the child's safety,  
6 security and best interests based solely on the child's or the adults' race, for such action is  
7 necessarily based on inherently demeaning, stereotypical assumptions about an  
8 individual's race or culture. Although the court did not reach constitutional issues, a core  
9 premise of the Baby Veronica decision, *Adoptive Couple v. Baby Girl*, \_\_ U.S. \_\_, 133 S.  
10 Ct. 2552 (2013), was that ICWA cannot force a child to create a racially-conforming  
11 relationship and that a child should not be made to sever existing relationships in order to  
12 create new racially-conforming ones.

### 13 CLAIMS FOR RELIEF

#### 14 COUNT 1 – VIOLATION OF THE EQUAL PROTECTION GUARANTEE OF 15 THE FIFTH AMENDMENT

16 110. Plaintiffs reallege, adopt and incorporate by reference the preceding  
17 paragraphs as though fully set forth herein.

18 111. The jurisdiction-transfer provision, 25 U.S.C. § 1911(b), New Guidelines at  
19 §§ C.1, C.2, C.3, is based solely on the race of the child and the adults involved.

20 112. The active efforts provision, 25 U.S.C. § 1912(d), New Guidelines at §§  
21 A.2, A.3, B.1, B.2, B.4, B.8, D.2, creates a separate set of procedures for children with  
22 Indian ancestry and all other children based solely on the child's race.

23 113. The clear and convincing evidence burden of proof in foster care placement  
24 orders under ICWA, 25 U.S.C. § 1912(e), New Guidelines at § D.3, that is applicable to  
25 children with Indian ancestry as compared to Arizona's demonstrably lesser burden of  
26 proof that is applicable to all other children is a legally required, unequal treatment of  
27 children with Indian ancestry. Government cannot treat the safety and security of children  
28 with Indian ancestry less seriously than the safety and security of all other children.

1           114. The beyond a reasonable doubt burden of proof in termination of parental  
2 rights proceedings under ICWA, 25 U.S.C. § 1912(f), New Guidelines at § D.3, that is  
3 applicable to children with Indian ancestry as compared to Arizona’s demonstrably lesser  
4 burden of proof that is applicable to all other children is a legally required separate,  
5 unequal treatment of children with Indian ancestry. Government cannot treat the best  
6 interests of children with Indian ancestry differently and less seriously than those of all  
7 other children.

8           115. The foster/preadoptive and adoption placement preferences under ICWA,  
9 25 U.S.C. §§ 1915(b), (a), New Guidelines at §§ F.1, F.2, F.3, F.4, single out and treat  
10 differently children with Indian ancestry. They also single out and treat differently the  
11 non-Indian adults involved in the care and upbringing of children with Indian ancestry.

12           116. The jurisdiction-transfer provision, active efforts provision, burden of proof  
13 in foster care placement orders provision, burden of proof in termination of parental rights  
14 orders provision, foster/preadoptive care placement preferences provision, and the  
15 adoption placement preferences provision of ICWA, and New Guidelines, all subject  
16 Plaintiffs to unequal treatment under the law based solely on the race of the child and the  
17 adults involved and are therefore unconstitutional under the equal protection guarantee of  
18 the Fifth Amendment.

19           117. Because the foregoing provisions of ICWA and the New Guidelines do not  
20 serve a compelling governmental purpose in a narrowly tailored fashion, they violate the  
21 equal protection guarantee of the Fifth Amendment.

22           **COUNT 2 – VIOLATION OF THE DUE PROCESS GUARANTEE OF THE**  
23           **FIFTH AMENDMENT**

24           118. Plaintiffs reallege, adopt and incorporate by reference the preceding  
25 paragraphs as though fully set forth herein.

26           119. The jurisdiction-transfer provision forces Plaintiffs to submit to the personal  
27 jurisdiction of a forum with which they have no contacts or ties.  
28

1           120. The jurisdiction-transfer provision, 25 U.S.C. § 1911(b), New Guidelines at  
2 §§ C.1, C.2, C.3, disregards well-established Supreme Court pronouncements which  
3 require minimum contacts between the forum and the litigant for the forum to  
4 constitutionally exercise specific or general personal jurisdiction over the litigant, and are  
5 therefore, unconstitutional under the due process guarantee of the Fifth Amendment. *See*  
6 *Int'l Shoe Co. v. Washington*, 326 U.S. 310 (1945); *World-Wide Volkswagen Corp. v.*  
7 *Woodson*, 444 U.S. 286 (1980); *Helicopteros Nacionales de Colombia v. Hall*, 466 U.S.  
8 408 (1984); *Asahi Metal Industry Co. v. Superior Court*, 480 U.S. 102 (1987).

9           121. Every child and adult deserves an individualized, race-neutral determination  
10 under uniform standards when courts make foster/preadoptive care and adoption  
11 placement decisions. Every child and adult has a right to be free from the use of race in  
12 their individualized foster/preadoptive care and adoption placement decisions. ICWA's  
13 jurisdiction-transfer provision, 25 U.S.C. § 1911(b), active efforts provision, 25 U.S.C. §  
14 1912(d), foster care burden of proof, 25 U.S.C. § 1912(e), termination of parental rights  
15 burden of proof, 25 U.S.C. § 1912(f), foster/preadoptive care placement preferences  
16 provision, 25 U.S.C. § 1915(b), the adoption placement preferences provision, 25 U.S.C.  
17 § 1915(a), and New Guidelines at §§ A.2, A.3, B.1, B.2, B.4, B.8, C.1, C.2, C.3, D.2, D.3,  
18 F.1, F.2, F.3, F.4, violate the substantive due process rights of children with Indian  
19 ancestry, and those of adults involved in their care and upbringing who have an existing  
20 family-like relationship with the child. *See Troxel v. Granville*, 530 U.S. 57, 88 (2000)  
21 (Stevens, J., dissenting); *Roberts v. U.S. Jaycees*, 468 U.S. 609, 618 (1984); *Smith v. Org.*  
22 *of Foster Families for Equality & Reform*, 431 U.S. 816, 844 (1977); *In re Santos Y.*, 92  
23 Cal. App. 4th 1274, 1314–1317 (Cal. App. 2001); *In re Bridget R.*, 41 Cal. App. 4th 1483,  
24 1503–1504 (Cal. App. 1996); *In re Jasmon O.*, 878 P.2d 1297, 1307 (Cal. 1994).

25           122. Any determination regarding removal of a child from home, active efforts,  
26 termination of parental rights, foster care placement, or adoption placement must take into  
27 account the child's best interests. The failure of ICWA as applied by the BIA Guidelines  
28

1 to adequately consider the child’s best interests deprives the class of plaintiff children of  
2 liberty without due process of law in violation of the Fifth Amendment.

3 **COUNT 3 – VIOLATION OF THE SUBSTANTIVE DUE PROCESS AND**  
4 **EQUAL PROTECTION CLAUSES OF THE FOURTEENTH AMENDMENT**

5 123. Plaintiffs reallege, adopt and incorporate by reference the preceding  
6 paragraphs as though fully set forth herein.

7 124. Defendant McKay, pursuant to his statutory duty to “[e]nsure the  
8 department’s compliance with the Indian child welfare act,” A.R.S. § 8-453(A)(20),  
9 complies with and enforces provisions of the Indian Child Welfare Act in Arizona.

10 125. Defendant McKay complies with and enforces the active efforts provision,  
11 25 U.S.C. § 1912(d), New Guidelines at §§ A.2, A.3, B.1, B.2, B.4, B.8, D.2, in Arizona.

12 126. Defendant McKay complies with and enforces the clear and convincing  
13 evidence burden of proof in foster care placements under ICWA, 25 U.S.C. § 1912(e),  
14 New Guidelines at § D.3, in Arizona.

15 127. Defendant McKay complies with and enforces the beyond a reasonable  
16 doubt burden of proof in termination of parental rights proceedings under ICWA, 25  
17 U.S.C. § 1912(f), New Guidelines at § D.3, in Arizona.

18 128. Defendant McKay complies with and enforces the foster/preadoptive and  
19 adoptive placement preferences under ICWA, 25 U.S.C. § 1915(b), (a), New Guidelines  
20 at §§ F.1, F.2, F.3, F.4, A.R.S. §§ 8-105.01(B), 8-514(C), in Arizona.

21 129. Defendant McKay’s compliance with and enforcement of these provisions  
22 subjects Plaintiffs to unequal treatment under color of state and federal law based solely  
23 on the race of the child and the adults involved and therefore deprives Plaintiffs of equal  
24 protection of the law under the Equal Protection Clause of the Fourteenth Amendment.  
25 *See* 42 U.S.C. § 1983.

26 130. Defendant McKay’s compliance with and enforcement of the jurisdiction-  
27 transfer provision, active efforts provision, burden of proof in foster care placements  
28 provision, burden of proof in termination of parental rights proceedings provision,



1 foster/preadoptive and adoptive placement preferences provisions under state law, ICWA,  
2 and New Guidelines, violate the substantive due process rights to be free from the use of  
3 race in child custody proceedings and to an individualized race-neutral determination in  
4 child custody proceedings of children with Indian ancestry, and those of adults involved  
5 in their care and upbringing who have an existing family-like relationship with the child.  
6 Defendant McKay's failure to adequately consider the child's best interests deprives the  
7 class of plaintiff children of liberty without due process of law in violation of the  
8 Fourteenth Amendment. *See* 42 U.S.C. § 1983.

9 **COUNT 4 – THE INDIAN CHILD WELFARE ACT EXCEEDS THE FEDERAL**  
10 **GOVERNMENT'S POWER UNDER THE INDIAN COMMERCE CLAUSE AND**  
11 **THE TENTH AMENDMENT.**

12 131. Plaintiffs reallege, adopt and incorporate by reference the preceding  
13 paragraphs as though fully set forth herein.

14 132. ICWA exceeds the federal government's power under the Indian Commerce  
15 Clause and the Tenth Amendment. A child with Indian ancestry is not an item of  
16 commerce, nor an instrumentality of commerce, nor tangible personal property the  
17 possession of which by federally-recognized Indian tribes promotes "Indian self-  
18 government." *Morton v. Mancari*, 417 U.S. 535, 555 (1974). Nor is a federal law dealing  
19 with child custody proceedings "tied rationally to the fulfillment of Congress' unique  
20 obligation toward the Indians." *Id.*; *Rice v. Cayetano*, 528 U.S. 495 (2000). Indeed, the  
21 BIA and the Department of the Interior's position is that "ICWA and these regulations or  
22 any associated Federal guidelines do not apply to ... [t]ribal court proceedings[.]" Notice  
23 of Proposed Rulemaking, Regulations for State Courts and Agencies in Indian Child  
24 Custody Proceedings, 80 Fed. Reg. 14880, 14887, § 23.103(e) (March 20, 2015); New  
25 Guidelines, 80 Fed. Reg. at A.3(e) (same). *See Adoptive Couple v. Baby Girl*, \_\_\_ U.S. \_\_\_,  
133 S. Ct. 2552, 2566–2570 (2013) (Thomas, J., concurring).

26 133. Congress cannot commandeer state resources to achieve federal policy  
27 objectives or commandeer state officers to execute federal laws. *Printz v. United States*,  
28 521 U.S. 898 (1997). ICWA impermissibly commandeers state courts and state agencies

1 to act as investigative and adjudicatory arms of the federal government or Indian tribes.  
2 ICWA impermissibly commandeers state courts and state agencies to apply, enforce, and  
3 implement an unconstitutional federal law. *Dodds v. Richardson*, 614 F.3d 1185, 1195–  
4 1196 & n.3 (10th Cir. 2010); Ariz. Const. art. II, § 3.

5 134. Child custody proceedings and domestic relations matters are a “virtually  
6 exclusive province of the States” under the Tenth Amendment upon which the federal  
7 government cannot intrude. *Sosna v. Iowa*, 419 U.S. 393, 404 (1975).

8 135. ICWA displaces inherent state jurisdiction over specified child welfare,  
9 custody, and adoption proceedings and therefore violates the Tenth Amendment. *Adoptive*  
10 *Couple v. Baby Girl*, 133 S. Ct. at 2566 (Thomas, J., concurring).

11 **COUNT 5 – VIOLATION OF ASSOCIATIONAL FREEDOMS UNDER THE**  
12 **FIRST AMENDMENT**

13 136. Plaintiffs reallege, adopt and incorporate by reference the preceding  
14 paragraphs as though fully set forth herein.

15 137. By virtue of ICWA, the tribes make the primary determination whether  
16 children with a specified blood quantum will be brought within their jurisdiction, custody,  
17 and control.

18 138. Many children who are subject to ICWA have few, if any, ties to the tribe  
19 upon which ICWA confers jurisdiction over them. Some but not all are members of the  
20 tribes but do not thereby consent to surrender their constitutional rights. Some are enrolled  
21 in the tribes as a result of the mandates of ICWA and the New Guidelines. Others are not  
22 members and have virtually no connection to the tribes other than a prescribed blood  
23 quantum. *See* New Guidelines, 80 Fed. Reg. at 10153, B.4(d)(3).

24 139. By operation of the provisions of ICWA and the New Guidelines challenged  
25 here, Plaintiff children like baby girl A.D. and baby boy C.R. are forced to associate with  
26 tribes and tribal communities and be subject to tribal jurisdiction often against their will  
27 and/or contrary to their best interests. *See id.* at 10150, A.2 (active efforts required to  
28 reunify an Indian child not only with the child’s family but also with the child’s tribe).

1           140. Under the active efforts provision, DCS is required to “take steps necessary  
2 to obtain membership for the child in the tribe that is designated as the Indian child’s  
3 tribe.” 80 Fed. Reg. at 10153, B.4(d)(iii). DCS, thus, forces children deemed Indian to  
4 associate with and become members of federally-recognized Indian tribes.

5           141. This forced association violates Plaintiffs’ freedom of association, which  
6 encompasses the freedom not to associate under the First Amendment. *Boy Scouts of*  
7 *America v. Dale*, 530 U.S. 640 (2000); *Knox v. Service Employees Int’l Union, Local*  
8 *1000*, \_\_ U.S. \_\_, 132 S. Ct. 2277 (2012).

9                                   **COUNT 6 – UNLAWFUL AGENCY ACTION**

10           142. Plaintiffs reallege, adopt and incorporate by reference the preceding  
11 paragraphs as though fully set forth herein.

12           143. Whereas ICWA’s jurisdiction-transfer provision is available to transfer only  
13 foster care placement and termination of parental rights proceedings to the jurisdiction of  
14 the tribe, 25 U.S.C. § 1911(b), the New Guidelines state, “The right to request a transfer  
15 is available at *any stage* of an Indian *child custody proceeding*, including during any  
16 period of emergency removal.” 80 Fed. Reg. at 10156, C.1(c) (emphasis added). Further,  
17 the New Guidelines instruct state courts that they “must transfer” all child custody  
18 proceedings if the parent does not object to the transfer, the tribal court does not decline,  
19 and there is no good cause to deny transfer. New Guidelines, 80 Fed. Reg. 10156, C.2,  
20 C.3.

21           144. BIA’s enlargement of the jurisdiction-transfer provision, 25 U.S.C. §  
22 1911(b), New Guidelines at C.1, C.2, C.3, making the provision available during  
23 preadoptive placement and adoptive placement proceedings, clearly contradicts the  
24 statutory provision. *See* 25 U.S.C. § 1903(1) (definitions).

25           145. BIA overstepped its authority by extending, in the New Guidelines, the  
26 jurisdiction-transfer provision to all child custody proceedings. Such extension, which  
27 directly contradicts a Congress-enacted provision, harms children in cases where parental  
28 rights have been terminated. It gives tribes the “right to request a transfer,” 80 Fed. Reg.

1 at 10156, C.1(c), in cases where Congress expressly did not give tribes a right to request  
2 transfer.

3 146. Such agency action is unlawful, in excess of statutory authority, and not in  
4 accordance with law. 5 U.S.C. § 706; *see American Federation of Govt. Employees, AFL-*  
5 *CIO, Local 3669 v. Shinseki*, 821 F. Supp. 2d 337 (D.D.C. 2011), *affirmed by*, 709 F.3d  
6 29 (D.C. Cir. 2012).

7 **COUNT 7 – DAMAGES UNDER TITLE VI**  
8 **OF THE CIVIL RIGHTS ACT (42 U.S.C. §§ 2000d–2000d-7)**

9 147. Plaintiffs reallege, adopt and incorporate by reference the preceding  
10 paragraphs as though fully set forth herein.

11 148. DCS is a state agency, of which Defendant McKay is Director. DCS receives  
12 federal financial assistance.

13 149. Defendant McKay has subjected and continues to subject Plaintiffs, and  
14 members of the class that Plaintiffs seek to represent, to *de jure* discrimination on the  
15 ground of the race, color, or national origin of the individuals involved.

16 150. For this *de jure* discriminatory treatment, Plaintiffs request that the court  
17 award nominal damages of \$1 each to each of the named Plaintiffs and to each of the  
18 members of the class they seek to represent under Title VI of the Civil Rights Act, 42  
19 U.S.C. §§ 2000d–2000d-7.

20  
21 **REQUEST FOR RELIEF**

22 Consequently, Plaintiffs respectfully request that the Court:

- 23 A. Certify the Plaintiff class as defined.
- 24 B. Declare that provisions of the Indian Child Welfare Act, specifically, 25  
25 U.S.C. §§ 1911(b), 1912(d), 1912(e), 1912(f), 1915(a), 1915(b), and the New Guidelines,  
26 §§ A.2, A.3, B.1, B.2, B.4, B.8, C.1, C.2, C.3, D.2, D.3, F.1, F.2, F.3, F.4, violate the  
27 United States Constitution both facially and as applied to Plaintiffs and others similarly  
28

1 situated, violate federal civil rights statutes, 42 U.S.C. §§ 1981, 1983, and violate Title VI  
2 of the Civil Rights Act, 42 U.S.C. §§ 2000d *et seq.*

3 C. Permanently enjoin Defendant Washburn and Defendant Jewell from  
4 enforcing these provisions of the Indian Child Welfare Act and the New Guidelines.

5 D. Permanently enjoin Defendant McKay from complying with and enforcing  
6 these unconstitutional provisions of the Indian Child Welfare Act, the New Guidelines,  
7 and state law.

8 E. Hold unlawful and set aside New Guidelines, §§ C.1, C.2, C.3 under 5  
9 U.S.C. § 706.

10 F. Award nominal damages of \$1 each to each of the named Plaintiffs and to  
11 each of the members of the class that they represent under 42 U.S.C. §§ 2000d–2000d-7.

12 G. Award Plaintiffs their reasonable attorneys’ fees, litigation expenses and  
13 costs, pursuant to 28 U.S.C. § 2412 (Equal Access to Justice Act) and 42 U.S.C. § 1988  
14 (Civil Rights Act), and other applicable law.

15 H. Grant such other relief as the Court may deem just and proper.

16 **RESPECTFULLY SUBMITTED** this 2nd day of March, 2016 by:

17  
18 /s/ Aditya Dynar

19 Aditya Dynar (031583)

20 **Scharf-Norton Center for Constitutional Litigation**  
21 **at the GOLDWATER INSTITUTE**

22 Michael W. Kirk (admitted *pro hac vice*)

23 Brian W. Barnes (admitted *pro hac vice*)

24 Harold S. Reeves (admitted *pro hac vice*)

25 **COOPER & KIRK, PLLC**

26 *Attorneys for Plaintiffs*

1 **CERTIFICATE OF SERVICE**

Document Electronically Filed and Served by ECF this 2nd day of March, 2016.

2  
3 MARK BRNOVICH  
4 ATTORNEY GENERAL  
5 John S. Johnson  
6 Dawn R. Williams  
7 Gary N. Lento  
8 Melanie G. McBride  
9 Joshua R. Zimmerman  
10 1275 West Washington Street  
11 Phoenix, Arizona 85007  
[John.Johnson@azag.gov](mailto:John.Johnson@azag.gov)  
[Dawn.Williams@azag.gov](mailto:Dawn.Williams@azag.gov)  
[Gary.Lento@azag.gov](mailto:Gary.Lento@azag.gov)  
[Melanie.McBride@azag.gov](mailto:Melanie.McBride@azag.gov)  
[Joshua.Zimmerman@azag.gov](mailto:Joshua.Zimmerman@azag.gov)

12 Steven M. Miskinis  
13 Ragu-Jara Gregg  
14 U.S. Department of Justice  
15 ENRD/ Indian Resources Section  
16 P.O. Box 7611  
17 Ben Franklin Station  
18 Washington, D.C. 20044-7611  
[Steven.miskinis@usdoj.gov](mailto:Steven.miskinis@usdoj.gov)  
[ragu-jara.gregg@usdoj.gov](mailto:ragu-jara.gregg@usdoj.gov)

19 Courtesy Copy Mailed this 2nd day of March, 2016 to:

20 Honorable Neil V. Wake  
21 United States District Court  
22 Sandra Day O'Connor U.S. Courthouse, Ste. 524  
23 401 W. Washington St., SPC 52  
Phoenix, AZ 85003-2154

24 /s/ Kris Schlott  
Kris Schlott

# Exhibit 1

# **CHILD WELFARE REPORTING REQUIREMENTS**

## **SEMI-ANNUAL REPORT**

**FOR THE PERIOD OF**

**APRIL 1, 2015 THROUGH SEPTEMBER 30, 2015**



**ARIZONA REVISED STATUTES**

**[LAWS 2011, CHAPTER 147]**

**ARIZONA DEPARTMENT OF CHILD SAFETY**



### **Children in Out-of-Home Care**

The Department remains committed to working with the community to keep children safe and prevent the need for children to be removed from their homes. Notwithstanding this commitment, the number of children in out-of-home care increased from 17,592 in the prior reporting period to 18,657 in September 2015.

The Department continues to make efforts to place children who have been removed from their home in the most family-like setting possible. In September 2015, 14,863 children – or approximately 80 percent of all children in out-of-home care – were placed with relatives, licensed foster parents, or trial home visit with a parent. Efforts to increase the number of licensed foster parents who are able to meet the needs of children requiring out-of-home placement resulted in 774 new homes being licensed during the reporting period.

As part of the strategic plan, the Department is striving to improve capacity to place children in family environments and fully meet the needs of children in care and their families. During this reporting period DCS was able to accomplish the following:

- Increased use of Placement Coordinators to identify available kinship placements upon removal;
- Expanded the use of software tools, e.g. Lexis Nexis, to find potential kinship placements;
- Established Fostering Inclusion Respect Support Trust Advisory (FIRST) Commission; and
- Established the Building Resilient Families program to deliver in-home prevention services in Maricopa County for low risk families who have been the subject of a DCS investigation.

The state requires monthly face-to-face visitation with children in foster care. The current report shows that 84.4 percent of the children in foster care received their visitation during the last month of the reporting period. There is a strong correlation between caseworker visits with children and positive outcomes for these children, such as achieving permanency and other indicators of child well-being. The Department continues to make efforts to improve our rate of visitation.

### **Permanency for Children**

Arizona is a national leader in the number of finalized adoptions. The Department remains committed to work toward achieving permanency for children placed in out-of-home care as demonstrated by increasing the total number of children achieving permanency through adoption. This number increased by two percent, from 1,576 during this reporting period compared to 1,552 during the same reporting period last year.

The Department demonstrated a significant increase in the number of children safely reunified with their families. 3,102 children exited DCS custody to reunify with their parents or primary caretakers this reporting period compared to 2,636 during the last reporting period, which is an 18% increase.

As part of the Strategic Plan, the Department continues recruitment efforts of foster and adoptive homes. Recently, the Department adjusted foster care reimbursement rates for families who are

**U.S. District Court  
DISTRICT OF ARIZONA (Phoenix Division)  
CIVIL DOCKET FOR CASE #: 2:15-cv-01259-NVW**

Carter et al v. Washburn et al  
Assigned to: Senior Judge Neil V Wake  
Case in other court: Ninth Circuit, 17-15839  
Cause: 42:1983 Civil Rights Act

Date Filed: 07/06/2015  
Date Terminated: 03/16/2017  
Jury Demand: None  
Nature of Suit: 440 Civil Rights: Other  
Jurisdiction: U.S. Government Defendant

**Plaintiff**

**Carol Coghlan Carter**

*next friend of A.D., C.C., L.G. and C.R.,  
minors  
next friend of  
A.D.  
next friend of  
C.C.  
next friend of  
L.G.  
next friend of  
C.R.*

represented by **Aditya Dynar**

Goldwater Institute  
500 E Coronado Rd.  
Phoenix, AZ 85004  
602-462-5000  
Email: [adynar@goldwaterinstitute.org](mailto:adynar@goldwaterinstitute.org)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Brian W Barnes**

Cooper & Kirk PLLC  
1523 New Hampshire Ave. NW  
Washington, DC 20036  
202-220-9600  
Fax: 202-220-9601  
Email: [bbarnes@cooperkirk.com](mailto:bbarnes@cooperkirk.com)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Christina Maria Sandefur**

Goldwater Institute  
500 E Coronado Rd.  
Phoenix, AZ 85004  
602-462-5000  
Fax: 602-256-7045  
Email: [CSandefur@goldwaterinstitute.org](mailto:CSandefur@goldwaterinstitute.org)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Clint Daniel Bolick**

Goldwater Institute  
500 E Coronado Rd  
Phoenix, AZ 85004  
602-462-5000  
Fax: 602-256-7045  
Email: [cbolick@goldwaterinstitute.org](mailto:cbolick@goldwaterinstitute.org)  
**TERMINATED: 01/12/2016**  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Courtney Christine Van Cott**

Goldwater Institute  
500 E Coronado Rd.  
Phoenix, AZ 85004  
602-462-5000

Email: cvancott@goldwaterinstitute.org

*TERMINATED: 09/14/2015*

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Harold S Reeves**

Cooper & Kirk PLLC  
1523 New Hampshire Ave. NW  
Washington, DC 20036  
202-220-9600

Fax: 202-220-9601

Email: hreeves@cooperkirk.com

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Michael W Kirk**

Cooper & Kirk PLLC  
1523 New Hampshire Ave. NW  
Washington, DC 20036  
202-220-9600

Fax: 202-220-9601

Email: mkirk@cooperkirk.com

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Plaintiff**

**Unknown Party**

*named as S.H., a married couple*

represented by **Aditya Dynar**

(See above for address)

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Brian W Barnes**

(See above for address)

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Christina Maria Sandefur**

(See above for address)

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Clint Daniel Bolick**

(See above for address)

*TERMINATED: 01/12/2016*

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Courtney Christine Van Cott**

**ER.065**

(See above for address)  
*TERMINATED: 09/14/2015*  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Harold S Reeves**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Michael W Kirk**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Plaintiff**

**Unknown Party**  
*named as J.H., a married couple*

represented by **Aditya Dynar**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Brian W Barnes**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Christina Maria Sandefur**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Clint Daniel Bolick**  
(See above for address)  
*TERMINATED: 01/12/2016*  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Courtney Christine Van Cott**  
(See above for address)  
*TERMINATED: 09/14/2015*  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Harold S Reeves**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Michael W Kirk**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Plaintiff**

**Unknown Party**

*named as K.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals*

represented by **Aditya Dynar**

(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Brian W Barnes**

(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Christina Maria Sandefur**

(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Clint Daniel Bolick**

(See above for address)  
*TERMINATED: 01/12/2016*  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Courtney Christine Van Cott**

(See above for address)  
*TERMINATED: 09/14/2015*  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Harold S Reeves**

(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Michael W Kirk**

(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Plaintiff**

**Unknown Party**

*named as M.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals*

represented by **Aditya Dynar**

(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Brian W Barnes**

(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Christina Maria Sandefur**

(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Clint Daniel Bolick**

(See above for address)  
*TERMINATED: 01/12/2016*  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Courtney Christine Van Cott**  
(See above for address)  
*TERMINATED: 09/14/2015*  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Harold S Reeves**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Michael W Kirk**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Plaintiff**

**Ronald Federici**

*Dr., next friend of A.D., C.C., L.G. and*  
*C.R., minors*  
*next friend of*  
*A.D.*  
*next friend of*  
*C.C.*  
*next friend of*  
*L.G.*  
*next friend of*  
*C.R.*

represented by **Aditya Dynar**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Brian W Barnes**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Christina Maria Sandefur**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Harold S Reeves**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Michael W Kirk**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Plaintiff**

**Unknown Party**

*a married couple; for themselves and on*  
*behalf of a class of similarly-situated*  
*individuals*

represented by **Aditya Dynar**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Brian W Barnes**

(See above for address)

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Christina Maria Sandefur**

(See above for address)

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Harold S Reeves**

(See above for address)

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Michael W Kirk**

(See above for address)

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Plaintiff**

**Unknown Party**

*P.R., a married couple; for themselves and  
on behalf of a class of similarly-situated  
individuals*

represented by **Aditya Dynar**

(See above for address)

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Brian W Barnes**

(See above for address)

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Christina Maria Sandefur**

(See above for address)

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Harold S Reeves**

(See above for address)

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Michael W Kirk**

(See above for address)

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

V.

**Defendant**

**Kevin Washburn**

*in his official capacity as Assistant  
Secretary of Bureau of Indian Affairs*

represented by **Christine Wild Ennis**

US Dept of Justice - ENRD

P.O. Box 7415

Washington, DC 20044

202-616-9473

Email: christine.ennis@usdoj.gov

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**JoAnn Lynn Kintz**

US Department of Justice - ENRD

Ben Franklin Station

P.O. Box 7611

Washington, DC 20044

202-305-0424

Fax: 202-305-0275

Email: joann.kintz@usdoj.gov

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Judith B Harvey**

US Dept of Justice

Ben Franklin Station

P.O. Box 7415

Washington, DC 20044

202-514-3932

Email: judith.harvey@usdoj.gov

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Steven Edward Miskinis**

US Dept of Justice

Land & Natural Resources Division

PO Box 44378

Indian Resources Section

Washington, DC 20026

202-305-0262

Fax: 202-305-0271

Email: steven.miskinis@usdoj.gov

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Defendant**

**Sally Jewell**

*in her official capacity as Secretary of  
Interior, United States Department of the  
Interior*

represented by **Christine Wild Ennis**

(See above for address)

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**JoAnn Lynn Kintz**

(See above for address)

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Judith B Harvey**

(See above for address)

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Steven Edward Miskinis**

**ER.070**



(See above for address)

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Defendant**

**Gregory McKay**

*named as Gregory A. McKay, in his  
official capacity as Director of Arizona  
Department of Child Safety*

represented by **Gary N Lento**

Office of the Attorney General - Phoenix  
1275 W Washington St.  
Phoenix, AZ 85007-2997  
602-364-0681

Email: gary.lento@azag.gov

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**John Stephen Johnson**

Office of the Attorney General - Phoenix  
1275 W Washington St.  
Phoenix, AZ 85007-2997  
602-542-9948

Email: John.Johnson@azag.gov

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Joshua Robert Zimmerman**

Office of the Attorney General - Phoenix  
1275 W Washington St.  
Phoenix, AZ 85007-2997  
602-542-8305

Fax: 602-542-8308

Email: Joshua.Zimmerman@azag.gov

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Dawn Rachelle Williams**

Office of the Attorney General  
3939 S Park Ave., Ste. 180  
Tucson, AZ 85714  
520-746-4443

Fax: 520-746-4459

Email: dawn.williams@azag.gov

*ATTORNEY TO BE NOTICED*

**Melanie Grace McBride**

Office of the Attorney General - Phoenix  
1275 W Washington St.  
Phoenix, AZ 85007-2997  
602-542-8305

Fax: 602-542-8308

Email: Melanie.McBride@azag.gov

*TERMINATED: 05/15/2017*

*ATTORNEY TO BE NOTICED*

**Wendy Jacobsen Harrison**

Office of the Attorney General - Phoenix

**ER.071**

1275 W Washington St.  
Phoenix, AZ 85007-2997  
602-542-9413  
Fax: 602-364-0055  
Email: Wendy.Harrison@azag.gov  
*ATTORNEY TO BE NOTICED*

**Movant**

**Gila River Indian Community**

represented by **Donald R Pongrace**  
Akin Gump Strauss Hauer & Feld LLP -  
Washington, DC  
1333 New Hampshire Ave. NW, Ste. 400  
Washington, DC 20036  
202-887-4466  
Fax: 202-887-4288  
Email: dpong race@akingump.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Linus Everling**

Gila River Indian Community - Sacaton, AZ  
P.O. Box 97  
Sacaton, AZ 85147  
520-562-9763  
Fax: 520-562-9769  
Email: linus.everling@gric.nsn.us  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Merrill C Godfrey**

Akin Gump Strauss Hauer & Feld LLP -  
Washington, DC  
1333 New Hampshire Ave. NW, Ste. 400  
Washington, DC 20036  
202-887-4195  
Fax: 202-887-4288  
Email: mgodfrey@akingump.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Thomas L Murphy**

Gila River Indian Community - Sacaton, AZ  
P.O. Box 97  
Sacaton, AZ 85147  
520-562-9764  
Email: thomas.murphy@gric.nsn.us  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Movant**

**Navajo Nation**  
*Department of Justice*

represented by **Katherine Claire Belzowski**  
Navajo Nation Department of Justice  
P.O. Box 2010  
Window Rock, AZ 86515

**ER.072**

928-871-6937

Email: kbelzowski@nndoj.org

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Paul Wesley Spruhan**

Navajo Nation Dept of Justice

PO Box 2010

Window Rock, AZ 86515

928-871-6275

Fax: 928-871-6177

Email: pspruhan@nndoj.org

*ATTORNEY TO BE NOTICED*

**Amicus**

**Casey Family Programs**

represented by **Hyland Hunt**

Akin Gump Strauss Hauer & Feld LLP -  
Washington, DC

1333 New Hampshire Ave. NW, Ste. 400

Washington, DC 20036

202-887-4000

Fax: 202-887-4288

Email: hhunt@akingump.com

*TERMINATED: 07/07/2016*

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**James E Tysse**

Akin Gump Strauss Hauer & Feld LLP -  
Washington, DC

1333 New Hampshire Ave. NW, Ste. 400

Washington, DC 20036

202-887-4000

Fax: 202-887-4288

Email: jtysse@akingump.com

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Pratik A Shah**

Akin Gump Strauss Hauer & Feld LLP -  
Washington, DC

1333 New Hampshire Ave. NW, Ste. 400

Washington, DC 20036

202-887-4000

Fax: 202-887-4288

Email: pshah@akingump.com

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Z W Julius Chen**

Akin Gump Strauss Hauer & Feld LLP -  
Washington, DC

1333 New Hampshire Ave. NW, Ste. 400

Washington, DC 20036

**ER.073**

202-887-4000

Fax: 202-887-4288

Email: chenj@akingump.com

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Amicus**

**Annie E. Casey Foundation**

represented by **Hyland Hunt**

(See above for address)

*TERMINATED: 07/07/2016*

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**James E Tysse**

(See above for address)

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Pratik A Shah**

(See above for address)

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Z W Julius Chen**

(See above for address)

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Amicus**

**Center for the Study of Social Policy**

represented by **Hyland Hunt**

(See above for address)

*TERMINATED: 07/07/2016*

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**James E Tysse**

(See above for address)

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Pratik A Shah**

(See above for address)

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Z W Julius Chen**

(See above for address)

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Amicus**

**Child Welfare League of America**

represented by **Hyland Hunt**

(See above for address)

*TERMINATED: 07/07/2016*

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**James E Tysse**

(See above for address)

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Pratik A Shah**

(See above for address)

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Z W Julius Chen**

(See above for address)

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Amicus**

**Children's Defense Fund**

represented by **Hyland Hunt**

(See above for address)

*TERMINATED: 07/07/2016*

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**James E Tysse**

(See above for address)

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Pratik A Shah**

(See above for address)

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Z W Julius Chen**

(See above for address)

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Amicus**

**Donaldson Adoption Institute**

represented by **Hyland Hunt**

(See above for address)

*TERMINATED: 07/07/2016*

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**James E Tysse**

(See above for address)

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Pratik A Shah**

**ER.075**

(See above for address)

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Z W Julius Chen**

(See above for address)

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Amicus**

**First Focus Campaign for Children**

represented by **Hyland Hunt**

(See above for address)

*TERMINATED: 07/07/2016*

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**James E Tysse**

(See above for address)

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Pratik A Shah**

(See above for address)

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Z W Julius Chen**

(See above for address)

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Amicus**

**FosterClub**

represented by **Hyland Hunt**

(See above for address)

*TERMINATED: 07/07/2016*

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**James E Tysse**

(See above for address)

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Pratik A Shah**

(See above for address)

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Z W Julius Chen**

(See above for address)

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Amicus**

**Generations United**

represented by **Hyland Hunt**  
(See above for address)  
*TERMINATED: 07/07/2016*  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**James E Tysse**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Pratik A Shah**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Z W Julius Chen**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Amicus**

**National Center on Adoption and  
Permanency**

represented by **Hyland Hunt**  
(See above for address)  
*TERMINATED: 07/07/2016*  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**James E Tysse**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Pratik A Shah**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Z W Julius Chen**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Amicus**

**North American Council on Adoptable  
Children**

represented by **Hyland Hunt**  
(See above for address)  
*TERMINATED: 07/07/2016*  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**James E Tysse**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Pratik A Shah**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Z W Julius Chen**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Amicus**

**W. Haywood Burns Institute**

represented by **Hyland Hunt**  
(See above for address)  
*TERMINATED: 07/07/2016*  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**James E Tysse**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Pratik A Shah**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Z W Julius Chen**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Amicus**

**National Congress of American Indians**

represented by **Erin C Dougherty**  
Native American Rights Fund - Anchorage,  
AK  
745 W 4th Ave., Ste. 502  
Anchorage, AK 99501-1763  
907-276-0680  
Fax: 907-276-2466  
Email: [dougherty@narf.org](mailto:dougherty@narf.org)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Kathryn E Fort**  
Michigan State University College of Law  
Indigenous Law & Policy Center  
648 N Shaw Lane  
E Lansing, MI 48824-1300  
517-432-6992  
Email: [fort@law.msu.edu](mailto:fort@law.msu.edu)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*



**Matthew N Newman**

Native American Rights Fund - Anchorage,  
AK

745 W 4th Ave., Ste. 502  
Anchorage, AK 99501-1763  
907-276-0680

Fax: 907-276-2466

Email: mnewman@narf.org

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Paula M Yost**

Dentons US LLP - San Francisco, CA  
525 Market St., 26th Fl.

San Francisco, CA 94105

415-882-5009

Fax: 415-882-0300

Email: paula.yost@dentons.com

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Samuel Franklin Daughety**

Tohono O'odham Nation

Office of the Attorney General

P.O. Box 830

Sells, AZ 85634

520-383-3410

Email: samuel.daughety@dentons.com

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Samuel Kohn**

Dentons US LLP - Washington DC

1301 K St. NW, Ste. 600 E Tower

Washington, DC 20005-3364

202-408-6400

Email: samuel.kohn@dentons.com

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Amicus**

**Association on American Indian Affairs**

represented by **Erin C Dougherty**

(See above for address)

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Kathryn E Fort**

(See above for address)

*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**Matthew N Newman**

(See above for address)

*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Paula M Yost**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Samuel Franklin Daughety**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Samuel Kohn**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Amicus**

**National Indian Child Welfare  
Association**

represented by **Erin C Dougherty**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Kathryn E Fort**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Matthew N Newman**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Paula M Yost**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Samuel Franklin Daughety**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Samuel Kohn**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Amicus**

**National Alliance of Children's Trust  
and Prevention Funds**

represented by **Hyland Hunt**  
(See above for address)  
*TERMINATED: 07/07/2016*  
*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED***James E Tysse**

(See above for address)

*LEAD ATTORNEY**ATTORNEY TO BE NOTICED***Pratik A Shah**

(See above for address)

*LEAD ATTORNEY**ATTORNEY TO BE NOTICED***Z W Julius Chen**

(See above for address)

*LEAD ATTORNEY**ATTORNEY TO BE NOTICED***Amicus****Citizens Equal Rights Foundation**represented by **Michael Kielsky**

Kielsky Rike PLC

4635 S Lakeshore Dr.

Tempe, AZ 85282

480-626-5415

Fax: 480-626-5543

Email: Michael@KRazlaw.com

*LEAD ATTORNEY**ATTORNEY TO BE NOTICED***Amicus****Ohio Attorney General**represented by **Michael John Hendershot**

Ohio Attorney Generals Office - Columbus

OH

30 E Broad St., 17th Fl.

Columbus, OH 43215

614-644-0576

Email:

michael.hendershot@ohioattorneygeneral.gov

*LEAD ATTORNEY**ATTORNEY TO BE NOTICED*

<b>Date Filed</b>	<b>#</b>	<b>Docket Text</b>
07/06/2015	<a href="#"><u>1</u></a>	*COMPLAINT. Filing fee received: \$ 400.00, receipt number 0970-11864370 filed by Carol Coghlan Carter, Unknown Party (named as S.H., a married couple), Unknown Party (named as J.H., a married couple), Unknown Party (named as M.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals) and Unknown Party (named as K.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals). (Attachments: # <a href="#"><u>1</u></a> Exhibit, # <a href="#"><u>2</u></a> Civil Cover Sheet) (ATD) Modified to edit text on 7/7/2015 (ATD). (Entered: 07/07/2015)
07/06/2015	<a href="#"><u>2</u></a>	*SUMMONS Submitted by Carol Coghlan Carter, Unknown Party (named as S.H., a married couple), Unknown Party (named as J.H., a married couple), Unknown Party (named as M.C., a married couple; for themselves and on behalf of a class of similarly-

**ER.081**

		situated individuals) and Unknown Party (named as K.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals). (Submitted by Clint Bolick) (Attachments: # <a href="#">1</a> Summons, # <a href="#">2</a> Summons, # <a href="#">3</a> Summons, # <a href="#">4</a> Summons) (ATD) Modified to edit text on 7/7/2015 (ATD). (Entered: 07/07/2015)
07/06/2015	<a href="#">3</a>	Filing fee paid, receipt number 0970-11864370. This case has been assigned to the Honorable David K Duncan. All future pleadings or documents should bear the correct case number: CV-15-1259-PHX-DKD. Magistrate Election form attached. (Attachments: # <a href="#">1</a> Instructions) (ATD) (Entered: 07/07/2015)
07/07/2015	<a href="#">4</a>	Summons Issued as to Sally Jewell, Gregory McKay, Kevin Washburn, John S Leonardo and Loretta E Lynch. (Attachments: # <a href="#">1</a> Summons, # <a href="#">2</a> Summons, # <a href="#">3</a> Summons, # <a href="#">4</a> Summons)(ATD)*** IMPORTANT: When printing the summons, select "Document and stamps" or "Document and comments" for the seal to appear on the document. (Entered: 07/07/2015)
07/09/2015	5	Party Elects Assignment of Case to District Judge Jurisdiction. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (MAP) (Entered: 07/09/2015)
07/09/2015	6	MINUTE ORDER: Pursuant to Local Rule 3.7(b), a request has been received for a random reassignment of this case to a District Judge. FURTHER ORDERED Case reassigned by random draw to Judge Neil V. Wake. All further pleadings/papers should now list the following COMPLETE case number: CV-15-1259-PHX-NVW. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (MAP) (Entered: 07/09/2015)
07/09/2015	<a href="#">7</a>	ORDER that motions pursuant to Fed. R. Civ. P. 12(b)(6) and 12(c) are discouraged if the defect can be cured by filing an amended pleading. Therefore, the parties must meet and confer prior to the filing of such motions to determine whether it can be avoided. FURTHER ORDERED that Plaintiffs serve a copy of this Order upon Defendants and file notice of service. See order for details. Signed by Judge Neil V. Wake on 7/9/15. (NKS) (Entered: 07/09/2015)
07/15/2015	<a href="#">8</a>	MOTION for Admission Pro Hac Vice as to attorney Brian Barnes on behalf of plaintiffs. (BAS) (Entered: 07/15/2015)
07/15/2015		PRO HAC VICE FEE PAID. \$ 35, receipt number PHX160695 as to Brian W Barnes. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (BAS) (Entered: 07/15/2015)
07/15/2015	9	ORDER pursuant to General Order 09-08 granting <a href="#">8</a> Motion for Admission Pro Hac Vice. Per the Court's Administrative Policies and Procedures Manual, applicant has five (5) days in which to register as a user of the Electronic Filing System. Registration to be accomplished via the court's website at www.azd.uscourts.gov. Counsel is advised that they are limited to two (2) additional e-mail addresses in their District of Arizona User Account. (BAS) (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (Entered: 07/15/2015)
07/16/2015	<a href="#">10</a>	SERVICE EXECUTED filed by Carol Coghlan Carter: Affidavit of Service re: Summons, Class Action Complaint, District Judge Option upon Gregory A. McCay on 07/09/2015. (Dynar, Aditya) (Entered: 07/16/2015)
07/16/2015	<a href="#">11</a>	SERVICE EXECUTED filed by Carol Coghlan Carter: Affidavit of Service re: Summons, Class Action Complaint, District Judge Option upon John S. Leonardo on 07/09/2015. (Dynar, Aditya) (Entered: 07/16/2015)
07/16/2015	<a href="#">12</a>	SERVICE EXECUTED filed by Carol Coghlan Carter: Affidavit of Service re:

		07/09/2015 Order upon John S. Leonardo on 07/10/2015. (Dynar, Aditya) (Entered: 07/16/2015)
07/16/2015	<a href="#">13</a>	SERVICE EXECUTED filed by Carol Coghlan Carter: Affidavit of Service re: 07/09/2015 Order upon Gregory A. McKay on 07/10/2015. (Dynar, Aditya) (Entered: 07/16/2015)
07/21/2015	<a href="#">14</a>	MOTION for Admission Pro Hac Vice as to attorney Harold Reeves on behalf of Carol Coghlan Carter. (BAS) (Entered: 07/21/2015)
07/21/2015		PRO HAC VICE FEE PAID. \$ 35, receipt number PHX160853 as to Harold S Reeves. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (BAS) (Entered: 07/21/2015)
07/21/2015	<a href="#">15</a>	MOTION for Admission Pro Hac Vice as to attorney Michael Kirk on behalf of Carol Coghlan Carter. (BAS) (Entered: 07/21/2015)
07/21/2015		PRO HAC VICE FEE PAID. \$ 35, receipt number PHX160854 as to Michael W Kirk. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (BAS) (Entered: 07/21/2015)
07/21/2015	16	ORDER pursuant to General Order 09-08 granting <a href="#">14</a> Motion for Admission Pro Hac Vice; granting <a href="#">15</a> Motion for Admission Pro Hac Vice. Per the Court's Administrative Policies and Procedures Manual, applicant has five (5) days in which to register as a user of the Electronic Filing System. Registration to be accomplished via the court's website at www.azd.uscourts.gov. Counsel is advised that they are limited to two (2) additional e-mail addresses in their District of Arizona User Account. (BAS) (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (Entered: 07/21/2015)
07/23/2015	<a href="#">17</a>	SERVICE EXECUTED filed by Carol Coghlan Carter, Unknown Party(named as K.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as S.H., a married couple), Unknown Party(named as M.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as J.H., a married couple ): Certified Mail Receipt re: District Judge Option upon Kevin Washburn; Sally Jewell; Loretta Lynch on July 15, 2015. (Dynar, Aditya) (Entered: 07/23/2015)
07/24/2015	<a href="#">18</a>	SERVICE EXECUTED filed by Carol Coghlan Carter, Unknown Party(named as K.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as S.H., a married couple), Unknown Party(named as M.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as J.H., a married couple ): Certified Mail Receipt re: 7/9/15 Order upon Sally Jewell, Kevin Washburn, Loretta Lynch on 07/16/2015. (Dynar, Aditya) (Entered: 07/24/2015)
07/29/2015	<a href="#">19</a>	First MOTION for Extension of Time Stipulation for Extension of Time to File Answer or Responsive Motion by Gregory McKay. (Attachments: # <a href="#">1</a> Text of Proposed Order Proposed Order)(Johnson, John) (Entered: 07/29/2015)
07/31/2015	<a href="#">20</a>	SERVICE EXECUTED filed by Carol Coghlan Carter, Unknown Party(named as K.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as S.H., a married couple), Unknown Party(named as M.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as J.H., a married couple ): Certified Mail Receipt re: Summons and Complaint upon Sally Jewell, Kevin Washburn and Loretta Lynch on July 13, 2015. (Dynar, Aditya) (Entered: 07/31/2015)
08/04/2015	<a href="#">21</a>	ORDER granting the parties' Stipulation (Doc. <a href="#">19</a> ). FURTHER ORDERED the deadline

		for Defendant McKay to answer or otherwise respond to the complaint is extended to and including 09/08/15. Signed by Judge Neil V. Wake on 8/4/15. (NKS) (Entered: 08/04/2015)
08/21/2015	<a href="#">22</a>	MOTION to Certify Class by Carol Coghlan Carter, Unknown Party(named as K.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as S.H., a married couple), Unknown Party(named as M.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as J.H., a married couple ). (Attachments: # <a href="#">1</a> Exhibit, # <a href="#">2</a> Text of Proposed Order)(Dynar, Aditya) (Entered: 08/21/2015)
08/21/2015	<a href="#">27</a>	MOTION to Seal Document <a href="#">25</a> Sealed Lodged Proposed Document, <a href="#">26</a> Sealed Lodged Proposed Document, <a href="#">24</a> Sealed Lodged Proposed Document, <a href="#">23</a> Sealed Lodged Proposed Document by Carol Coghlan Carter, Unknown Party(named as K.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as S.H., a married couple), Unknown Party(named as M.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as J.H., a married couple ). (Attachments: # <a href="#">1</a> Exhibit Exhibits 1 - 3, # <a href="#">2</a> Text of Proposed Order Proposed Order)(Dynar, Aditya) (Entered: 08/21/2015)
09/03/2015	<a href="#">28</a>	MOTION to Stay <i>pending deadlines and for status conference</i> by Sally Jewell, Kevin Washburn. (Miskinis, Steven) (Entered: 09/03/2015)
09/04/2015	<a href="#">29</a>	ORDER that Stipulation for Stay (Doc. <a href="#">28</a> ) is granted only to the extent that (1) Defendants' time to file a responsive pleading is extended to 10/16/15, (2) Plaintiffs' time to respond to Defendants' motions to dismiss is extended to 11/13/15, and (3) Defendants' time to file replies is extended to 12/04/15. These times will not be extended. The Stipulation is otherwise denied. FURTHER ORDERED that the parties confer about whether they can agree on a briefing schedule in response to Plaintiffs' Motion for Class Certification (Doc. <a href="#">22</a> ) and they may file a further motion, joint or separate, concerning such briefing. All Defendants' time to respond to that motion is extended to 09/17/15, and may be extended again. FURTHER ORDERED that the Joint Motion for Status Conference (Doc. <a href="#">28</a> ) is denied. See order for details. Signed by Judge Neil V. Wake on 9/4/15. (NKS) (Entered: 09/04/2015)
09/11/2015	<a href="#">23</a>	*SEALED Declaration of Carol Coghlan Carter filed by Carol Coghlan Carter, Unknown Party(named as K.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as S.H., a married couple), Unknown Party(named as M.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as J.H., a married couple ). (Attachments: # <a href="#">1</a> Exhibit Exhibits 1 - 9)(Dynar, Aditya) *Modified to link to Motion to Seal on 8/24/2015 (SCH). *Modified on 9/11/2015 to change from lodged to filed by doc. <a href="#">30</a> (MAP)*. (Entered: 08/21/2015)
09/11/2015	<a href="#">24</a>	*SEALED Joint Declaration of S.H. and J.H. filed by Carol Coghlan Carter, Unknown Party(named as K.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as S.H., a married couple), Unknown Party(named as M.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as J.H., a married couple ). (Dynar, Aditya) *Modified to link to Motion to Seal on 8/24/2015 (SCH). *Modified on 9/11/2015 to change from lodged to filed pursuant to order <a href="#">30</a> (MAP)*. (Entered: 08/21/2015)
09/11/2015	<a href="#">25</a>	*SEALED Joint Declaration of M.C. and K.C. filed by Carol Coghlan Carter, Unknown Party(named as K.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as S.H., a married couple), Unknown Party(named as M.C., a married couple; for themselves and on behalf of a class

		of similarly-situated individuals ), Unknown Party(named as J.H., a married couple ). (Dynar, Aditya) *Modified to link to Motion to Seal on 8/24/2015 (SCH). *Modified on 9/11/2015 to change from lodged to filed pursuant to Order <a href="#">30</a> (MAP)*. (Entered: 08/21/2015)
09/11/2015	<a href="#">26</a>	*SEALED Joint Declaration of M.G. and B.G. filed by Carol Coghlan Carter, Unknown Party(named as K.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as S.H., a married couple), Unknown Party(named as M.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as J.H., a married couple ). (Dynar, Aditya) *Modified to link to Motion to Seal on 8/24/2015 (SCH). *Modified on 9/11/2015 to change from lodged to filed pursuant ot Order <a href="#">30</a> (MAP)*. (Entered: 08/21/2015)
09/11/2015	<a href="#">30</a>	ORDER granting <a href="#">27</a> Motion to Seal. ORDERED that the following lodged proposed documents be and are hereby sealed: (1) Declaration of Carol Coghlan Carter (Doc. <a href="#">23</a> ); (2) Joint Declaration of M.C. and K.C. (Doc. <a href="#">25</a> ); (3) Joint Declaration of S.H. and J.H. (Doc. <a href="#">24</a> ); and (4) Joint Declaration of M.G. and B.G. (Doc. <a href="#">26</a> ). Signed by Judge Neil V Wake on 9/10/15.(MAP) (Entered: 09/11/2015)
09/14/2015	<a href="#">31</a>	MOTION to Withdraw as Attorney <i>Courtney Van Cott</i> by Carol Coghlan Carter, Unknown Party(named as K.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as S.H., a married couple), Unknown Party(named as M.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as J.H., a married couple ). (Attachments: # <a href="#">1</a> Text of Proposed Order)(Dynar, Aditya) (Entered: 09/14/2015)
09/14/2015	<a href="#">32</a>	ORDER that the Application (Doc. <a href="#">31</a> ) is GRANTED. FURTHER ORDERED that attorney Courtney Van Cott will henceforth not be an attorney of record in this case. FURTHER ORDERED directing the Clerk of the Court to make appropriate changes in the Court's CM/ECF System to reflect this change. Signed by Judge Neil V. Wake on 9/14/15. (NKS) (Entered: 09/14/2015)
09/17/2015	<a href="#">33</a>	Joint MOTION Deadline For Response to Class Certification Motion <i>Joint Status Report</i> by Gregory McKay. (Attachments: # <a href="#">1</a> Text of Proposed Order Defendants' Proposed Order, # <a href="#">2</a> Text of Proposed Order Plaintiffs' Proposed Order)(Johnson, John) (Entered: 09/17/2015)
09/21/2015	<a href="#">34</a>	ORDER: IT IS ORDERED setting a hearing on the issues presented in the Joint Status Report (Doc. <a href="#">33</a> ) for 9/23/2015 at 1:30 p.m., including (1) whether this Court may enter an order in compliance with the Arizona statutes, (2) the appropriate scope of class certification discovery, (3) the scheduling of class discovery, and (4) the scheduling of briefing on the class certification motion. Out-of-state counsel may appear by telephone by making prior arrangements with the Court. The hearing will be held in Courtroom 504, 401 West Washington Street, Phoenix, AZ 85003 before Judge Neil V Wake. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (NVW, vg) (Entered: 09/21/2015)
09/23/2015	<a href="#">35</a>	MINUTE ENTRY for proceedings held before Judge Neil V. Wake: Telephonic Conference (Judge Neil V. Wake also participating telephonically) held on 09/23/15. Discussion is held regarding the Joint Status Report (Doc. <a href="#">33</a> ) and the topics outlined in the Court's Order (Doc. <a href="#">34</a> ). The Court advises counsel how it wishes to proceed with scheduling going forward. As discussed on the record, construing the Joint Status Report (Doc. <a href="#">33</a> ) as a motion to extend the time for Defendants to respond to Plaintiffs' Motion for Class Certification (Doc. <a href="#">22</a> ), the Court grants the motion to the extent that Defendants' time to respond to Plaintiffs' Motion for Class Certification is stayed until further order. Oral Argument (on the motion to dismiss discussed at today's hearing) is set

		for 12/18/15, at 1:30 PM, in Courtroom 504, 401 West Washington Street, Phoenix, AZ 85003 before Judge Neil V. Wake.  APPEARANCES: Clint Bolick, Brian Barnes (by phone), Michael Kirk (by phone) and Harold Reeves (by phone) for Plaintiffs. John Johnson, Gaylene Morgan, Ragu-Jara Gregg (by phone), Steven Miskinis (by phone), Jury Harvey (by phone) and JoAnn Kintz (by phone) for Defendants. (Court Reporter Laurie Adams.) Hearing held 1:39 p.m. to 2:42 p.m. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (NKS) (Entered: 09/23/2015)
09/24/2015	<a href="#">36</a>	TRANSCRIPT REQUEST by Carol Coghlan Carter, Unknown Party(named as K.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as S.H., a married couple), Unknown Party(named as M.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as J.H., a married couple ) for proceedings held on 9/23/2015, Judge Neil V Wake hearing judge(s). (Bolick, Clint) (Entered: 09/24/2015)
10/06/2015	<a href="#">40</a>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of <i>Telephonic Status Conference</i> proceedings held on 09/23/2015, before Judge Neil V. Wake. (Court Reporter: Laurie A. Adams). The ordering party will have electronic access to the transcript immediately. All others may view the transcript at the court public terminal or it may be purchased through the Court Reporter/Transcriber by filing a Transcript Order Form on the docket before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 10/27/2015. Redacted Transcript Deadline set for 11/6/2015. Release of Transcript Restriction set for 1/4/2016. (RAP) (Entered: 10/14/2015)
10/09/2015	<a href="#">37</a>	MOTION for relief from Local Rule page limits by Sally Jewell, Kevin Washburn. (Miskinis, Steven) (Entered: 10/09/2015)
10/09/2015	38	ORDER: Before the Court is the Federal Defendants' Motion for Relief from Local Rule Page Limits (Doc. <a href="#">37</a> ). The Court does not grant extensions of page limits in advance of submission of the proposed over-length brief. The Court will examine the proposed brief and determine whether its length is justified. IT IS THEREFORE ORDERED that the Federal Defendants' Motion for Relief from Local Rule Page Limits (Doc. <a href="#">37</a> ) is denied without prejudice to submission of a further motion together with the proposed over-length brief. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (NKS) (Entered: 10/09/2015)
10/14/2015	<a href="#">39</a>	ORDER that Plaintiffs' Motion for Class Certification (Doc. <a href="#">22</a> ) is denied without prejudice as premature. See order for details. Signed by Judge Neil V. Wake on 10/14/15. (NKS) (Entered: 10/14/2015)
10/16/2015	<a href="#">41</a>	MOTION for Leave to File Excess Pages for Motion to Dismiss by Sally Jewell, Kevin Washburn. (Attachments: # <a href="#">1</a> Exhibit Proposed Motion, # <a href="#">2</a> Exhibit Certificate of Conferral, # <a href="#">3</a> Affidavit Miskinis Declaration)(Miskinis, Steven) (Entered: 10/16/2015)
10/16/2015	<a href="#">42</a>	* Filed at (Doc. <a href="#">68</a> ) LODGED Proposed Motion to Dismiss re: <a href="#">41</a> MOTION for Leave to File Excess Pages for Motion to Dismiss . Document to be filed by Clerk if Motion or Stipulation for Leave to File or Amend is granted. Filed by Sally Jewell, Kevin Washburn. (Attachments: # <a href="#">1</a> Exhibit Certificate of Conferral, # <a href="#">2</a> Affidavit Miskinis Declaration)(Miskinis, Steven) Modified on 10/29/2015 (EJA). (Entered: 10/16/2015)
10/16/2015	<a href="#">43</a>	MOTION for Leave to File Excess Pages for Motion to Dismiss by Gregory McKay. (Williams, Dawn) (Entered: 10/16/2015)
10/16/2015	<a href="#">44</a>	*Filed at (Doc. <a href="#">70</a> ) LODGED Proposed State Defendant's Motion to Abstain and



		Dismiss re: <a href="#">43</a> MOTION for Leave to File Excess Pages for Motion to Dismiss . Document to be filed by Clerk if Motion or Stipulation for Leave to File or Amend is granted. Filed by Gregory McKay. (Attachments: # <a href="#">1</a> Appendix Attachment 1)(Williams, Dawn) Modified on 10/29/2015 (EJA). (Entered: 10/16/2015)
10/16/2015	<a href="#">45</a>	MOTION for Admission Pro Hac Vice as to attorney Donald R. Pongrace by Gila River Indian Community. (Attachments: # <a href="#">1</a> Exhibit Certificate of Good Standing)(Pongrace, Donald) (Entered: 10/16/2015)
10/16/2015	<a href="#">46</a>	MOTION for Admission Pro Hac Vice as to attorney Merrill C. Godfrey by Gila River Indian Community. (Attachments: # <a href="#">1</a> Exhibit Certificate of Good Standing)(Godfrey, Merrill) (Entered: 10/16/2015)
10/16/2015	<a href="#">47</a>	*Filed Lodge 47-1 at (Doc. <a href="#">217</a> ) MOTION to Intervene <i>as Defendant</i> by Gila River Indian Community. (Attachments: # <a href="#">1</a> Exhibit Proposed Motion to Dismiss, # <a href="#">2</a> Text of Proposed Order)(Godfrey, Merrill) Modified on 9/29/2016 (DXD). (Entered: 10/16/2015)
10/21/2015	<a href="#">48</a>	NOTICE of Service of Discovery filed by Sally Jewell, Kevin Washburn. (Miskinis, Steven) (Entered: 10/21/2015)
10/23/2015	<a href="#">49</a>	MOTION for Admission Pro Hac Vice as to attorney James E. Tysse by Casey Family Programs, Annie E. Casey Foundation, Center for the Study of Social Policy, Child Welfare League of America, Children's Defense Fund, Donaldson Adoption Institute, First Focus Campaign for Children, FosterClub, Generations United, National Alliance of Children's Tust and Prevention Funds, National Center on Adoption and Permanency, North American Council on Adoptable Children, W. Haywood Burns Institute. (Attachments: # <a href="#">1</a> Certificate of Good Standing)(Tysse, James) (Entered: 10/23/2015)
10/23/2015	<a href="#">50</a>	*MOTION to File A Brief Of Amici Curiae In Support Of Motions To Dismiss by Annie E. Casey Foundation, Casey Family Programs, Center for the Study of Social Policy, Child Welfare League of America, Children's Defense Fund, Donaldson Adoption Institute, First Focus Campaign for Children, FosterClub, Generations United, National Alliance of Children's Tust and Prevention Funds, National Center on Adoption and Permanency, North American Council on Adoptable Children, W. Haywood Burns Institute. (Attachments: # <a href="#">1</a> Text of Proposed Order)(Tysse, James) *Modified to correct event on 10/26/2015 (ATD). (Entered: 10/23/2015)
10/23/2015	<a href="#">51</a>	*Filed at (Doc. <a href="#">84</a> )--LODGED Proposed Brief of Amici Curiae In Support of Motions to Dismiss re: <a href="#">50</a> MOTION for Leave to File A Brief Of Amici Curiae In Support Of Motions To Dismiss . Document to be filed by Clerk if Motion or Stipulation for Leave to File or Amend is granted. Filed by Annie E. Casey Foundation, Casey Family Programs, Center for the Study of Social Policy, Child Welfare League of America, Children's Defense Fund, Donaldson Adoption Institute, First Focus Campaign for Children, FosterClub, Generations United, National Alliance of Children's Tust and Prevention Funds, National Center on Adoption and Permanency, North American Council on Adoptable Children, W. Haywood Burns Institute. (Tysse, James) Modified on 11/18/2015 (LSP). (Entered: 10/23/2015)
10/23/2015	<a href="#">52</a>	MOTION for Admission Pro Hac Vice as to attorney Erin C Dougherty on behalf of proposed Amici Curiae AAIA, NCAI, and NICWA. (BAS) (Entered: 10/23/2015)
10/23/2015	<a href="#">53</a>	MOTION for Admission Pro Hac Vice as to attorney Matthew N Newman on behalf of proposed Amici Curiae AAIA, NCAI, and NICWA. (BAS) (Entered: 10/23/2015)
10/23/2015		PRO HAC VICE FEE PAID. \$ 70, receipt number PHX164318 as to Erin c Dougherty, Matthew N Newman. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (BAS) (Entered: 10/23/2015)

10/23/2015	<a href="#">54</a>	MOTION for Admission Pro Hac Vice as to attorney Samuel Kohn on behalf of proposed Amici Curiae AAIA, NCAI, and NICWA. (BAS) (Entered: 10/23/2015)
10/23/2015	<a href="#">55</a>	MOTION for Admission Pro Hac Vice as to attorney Paula M Yost on behalf of proposed Amici Curiae AAIA, NCAI, and NICWA. (BAS) (Entered: 10/23/2015)
10/23/2015		PRO HAC VICE FEE PAID. \$ 70, receipt number PHX164317 as to Samuel Kohn, Paula M Yost. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (BAS) (Entered: 10/23/2015)
10/23/2015	<a href="#">56</a>	ORDER pursuant to General Order 09-08 granting <a href="#">52</a> Motion for Admission Pro Hac Vice; granting <a href="#">53</a> Motion for Admission Pro Hac Vice; granting <a href="#">54</a> Motion for Admission Pro Hac Vice; granting <a href="#">55</a> Motion for Admission Pro Hac Vice. Per the Court's Administrative Policies and Procedures Manual, applicant has five (5) days in which to register as a user of the Electronic Filing System. Registration to be accomplished via the court's website at www.azd.uscourts.gov. Counsel is advised that they are limited to two (2) additional e-mail addresses in their District of Arizona User Account. (BAS) (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (Entered: 10/23/2015)
10/23/2015	<a href="#">57</a>	MOTION to File Amicus Curiae by National Congress of American Indians, Association on American Indian Affairs, National Indian Child Welfare Association. (Attachments: # <a href="#">1</a> Exhibit Lodged Amicus Brief, # <a href="#">2</a> Text of Proposed Order Proposed Order)(Daughety, Samuel) (Entered: 10/23/2015)
10/23/2015	<a href="#">58</a>	Corporate Disclosure Statement by Association on American Indian Affairs, National Congress of American Indians, National Indian Child Welfare Association. (Daughety, Samuel) (Entered: 10/23/2015)
10/26/2015	<a href="#">59</a>	*Filed at (Doc. <a href="#">85</a> )-- LODGED Proposed BRIEF OF AMICUS CURIAE NATIONAL CONGRESS OF AMERICAN INDIANS, ASSOCIATION ON AMERICAN INDIAN AFFAIRS, AND NATIONAL INDIAN CHILD WELFARE ASSOCIATION IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS. Document to be filed by Clerk if Motion or Stipulation for Leave to File or Amend is granted. Filed by Association on American Indian Affairs, National Congress of American Indians, National Indian Child Welfare Association. (Daughety, Samuel) Modified on 11/18/2015 (LSP). (Entered: 10/26/2015)
10/26/2015	<a href="#">60</a>	MOTION for Admission Pro Hac Vice as to attorney Z W Julius Chen on behalf of Annie E. Casey Foundation, Casey Family Programs, Center for the Study of Social Policy, Child Welfare League of America, Children's Defense Fund, Donaldson Adoption Institute, First Focus Campaign for Children, FosterClub, Generations United, National Alliance of Children's Trust and Prevention Funds, National Center on Adoption and Permanency, North American Council on Adoptable Children, and W. Haywood Burns Institute. (BAS) Modified on 10/27/2015 (ATD). (Entered: 10/27/2015)
10/26/2015	<a href="#">61</a>	MOTION for Admission Pro Hac Vice as to attorney Hyland Hunt on behalf of Annie E. Casey Foundation, Casey Family Programs, Center for the Study of Social Policy, Child Welfare League of America, Children's Defense Fund, Donaldson Adoption Institute, First Focus Campaign for Children, FosterClub, Generations United, National Alliance of Children's Trust and Prevention Funds, National Center on Adoption and Permanency, North American Council on Adoptable Children, and W. Haywood Burns Institute. (BAS) (Entered: 10/27/2015)
10/26/2015	<a href="#">62</a>	MOTION for Admission Pro Hac Vice as to attorney Pratik A Shah on behalf of Annie E. Casey Foundation, Casey Family Programs, Center for the Study of Social Policy, Child Welfare League of America, Children's Defense Fund, Donaldson Adoption Institute,

		First Focus Campaign for Children, FosterClub, Generations United, National Alliance of Children's Trust and Prevention Funds, National Center on Adoption and Permanency, North American Council on Adoptable Children, and W. Haywood Burns Institute. (BAS) (Entered: 10/27/2015)
10/27/2015		PRO HAC VICE FEE PAID. \$ 140, receipt number PHX164385 as to James E Tysse, Pratik A Shah, Hyland Hunt, Z W Julius Chen. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (BAS) (Entered: 10/27/2015)
10/27/2015	63	ORDER pursuant to General Order 09-08 granting <a href="#">49</a> Motion for Admission Pro Hac Vice; granting <a href="#">60</a> Motion for Admission Pro Hac Vice; granting <a href="#">61</a> Motion for Admission Pro Hac Vice; granting <a href="#">62</a> Motion for Admission Pro Hac Vice. Per the Court's Administrative Policies and Procedures Manual, applicant has five (5) days in which to register as a user of the Electronic Filing System. Registration to be accomplished via the court's website at www.azd.uscourts.gov. Counsel is advised that they are limited to two (2) additional e-mail addresses in their District of Arizona User Account. (BAS) (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (Entered: 10/27/2015)
10/27/2015		PRO HAC VICE FEE PAID. \$ 35, receipt number PHX164459 as to Donald R Pongrace, Merrill C Godfrey. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (BAS) (Entered: 10/27/2015)
10/27/2015	64	ORDER pursuant to General Order 09-08 granting <a href="#">45</a> Motion for Admission Pro Hac Vice; granting <a href="#">46</a> Motion for Admission Pro Hac Vice. Per the Court's Administrative Policies and Procedures Manual, applicant has five (5) days in which to register as a user of the Electronic Filing System. Registration to be accomplished via the court's website at www.azd.uscourts.gov. Counsel is advised that they are limited to two (2) additional e-mail addresses in their District of Arizona User Account. (BAS) (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (Entered: 10/27/2015)
10/28/2015	<a href="#">65</a>	MOTION for Admission Pro Hac Vice as to attorney Kathryn E Fort on behalf of Association on American Indian Affairs, National Congress of American Indians, and National Indian Child Welfare Association. (BAS) (Entered: 10/28/2015)
10/28/2015		PRO HAC VICE FEE PAID. \$ 35, receipt number PHX164477 as to Kathryn E Fort. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (BAS) (Entered: 10/28/2015)
10/28/2015	66	ORDER pursuant to General Order 09-08 granting <a href="#">65</a> Motion for Admission Pro Hac Vice. Per the Court's Administrative Policies and Procedures Manual, applicant has five (5) days in which to register as a user of the Electronic Filing System. Registration to be accomplished via the court's website at www.azd.uscourts.gov. Counsel is advised that they are limited to two (2) additional e-mail addresses in their District of Arizona User Account. (BAS) (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (Entered: 10/28/2015)
10/29/2015	<a href="#">67</a>	ORDER granting <a href="#">41</a> Federal Defendants' Motion for Leave to File Excess Pages. Clerk of the Court to file the Federal Defendants Lodged Motion to Dismiss (Doc. <a href="#">42</a> ). Signed by Judge Neil V Wake on 10/28/15.(EJA) (Entered: 10/29/2015)
10/29/2015	<a href="#">68</a>	MOTION to Dismiss for Lack of Jurisdiction and MOTION to Dismiss for Failure to State a Claim by Sally Jewell, Kevin Washburn. (EJA) (Entered: 10/29/2015)
10/29/2015	<a href="#">69</a>	ORDER granting <a href="#">43</a> State Defendants' Motion for Leave to File Excess Pages. Clerk of the Court to file the State Defendants' Lodged Motion to Dismiss (Doc. <a href="#">44</a> ). Signed by Judge Neil V Wake on 10/28/15. (EJA) (Entered: 10/29/2015)

10/29/2015	<a href="#">70</a>	MOTION to Dismiss for Lack of Jurisdiction and MOTION to Dismiss for Failure to State a Claim by Gregory McKay. (EJA) (Entered: 10/29/2015)
10/30/2015	<a href="#">71</a>	NOTICE of Appearance by Gary N Lento on behalf of Gregory McKay. (Lento, Gary) (Entered: 10/30/2015)
11/02/2015	<a href="#">72</a>	RESPONSE in Opposition re: <a href="#">47</a> MOTION to Intervene <i>as Defendant</i> filed by Carol Coghlan Carter, Unknown Party(named as J.H., a married couple ), Unknown Party(named as M.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as K.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as S.H., a married couple). (Bolick, Clint) (Entered: 11/02/2015)
11/02/2015	<a href="#">73</a>	First MOTION for Extension of Time to File Response/Reply as to <a href="#">51</a> Lodged Proposed Document, <a href="#">59</a> Lodged Proposed Document <i>Amicus Briefs</i> by Carol Coghlan Carter, Unknown Party(named as J.H., a married couple ), Unknown Party(named as M.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as K.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as S.H., a married couple). (Attachments: # <a href="#">1</a> Text of Proposed Order Proposed Order)(Dynar, Aditya) (Entered: 11/02/2015)
11/03/2015	<a href="#">74</a>	ORDER granting Plaintiffs' Motion (Doc. <a href="#">73</a> ). FURTHER ORDERED that Plaintiffs shall file their response to amicus briefs no later than 5:00 PM, 11/25/15. Signed by Judge Neil V. Wake on 11/3/15. (NKS) (Entered: 11/03/2015)
11/10/2015	<a href="#">75</a>	TRANSCRIPT REQUEST by Gregory McKay for proceedings held on 09/23/2015, Judge Neil V Wake hearing judge(s). (Lento, Gary) (Entered: 11/10/2015)
11/12/2015	<a href="#">76</a>	REPLY to Response to Motion re: <a href="#">47</a> MOTION to Intervene <i>as Defendant</i> filed by Gila River Indian Community. (Godfrey, Merrill) (Entered: 11/12/2015)
11/13/2015	<a href="#">77</a>	MOTION for Leave to File Excess Pages for Consolidated Response to Motions to Dismiss by Carol Coghlan Carter, Unknown Party(named as J.H., a married couple ), Unknown Party(named as M.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as K.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as S.H., a married couple). (Attachments: # <a href="#">1</a> Text of Proposed Order Proposed Order to Exceed Page Limit)(Dynar, Aditya) (Entered: 11/13/2015)
11/13/2015	<a href="#">78</a>	* Filed at (Doc. <a href="#">80</a> ) LODGED Proposed Plaintiffs' Consolidated Response to Federal Defendants' Motion to Dismiss and State Defendant's Motion to Abstain and Dsmiss Pursuant to Fed. R. Civ. P. 12(b)(1), (6) re: <a href="#">77</a> MOTION for Leave to File Excess Pages for Consolidated Response to Motions to Dismiss . Document to be filed by Clerk if Motion or Stipulation for Leave to File or Amend is granted. Filed by Carol Coghlan Carter, Unknown Party(named as J.H., a married couple ), Unknown Party(named as M.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as K.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as S.H., a married couple). (Attachments: # <a href="#">1</a> Exhibit Exhibits A-C)(Dynar, Aditya) Modified on 11/16/2015 (EJA). (Entered: 11/13/2015)
11/16/2015	<a href="#">79</a>	ORDER granting <a href="#">77</a> Motion for Leave to File Excess Pages. Plaintiffs may file a Response to Defendants' Motions to Dismiss of 44 pages in length. The Clerk of the Court is to file the Plaintiffs Lodged Response to Defendants' Motions to Dismiss (Doc. <a href="#">78</a> ). Signed by Judge Neil V Wake on 11/16/15. (EJA) (Entered: 11/16/2015)
11/16/2015	<a href="#">80</a>	*Plaintiffs' Consolidated Response to <a href="#">68</a> Federal Defendants' Motion to Dismiss and <a href="#">70</a>

		State Defendant's Motion to Abstain and Dsdismiss Pursuant to Fed. R. Civ. P. 12(b)(1), (6). Filed by Carol Coghlan Carter, Unknown Party(named as J.H., a married couple ), Unknown Party(named as M.C., a married couple; Unknown Party(named as K.C., a married couple; Unknown Party(named as S.H., a married couple). (EJA) Modified to edit text on 11/16/2015 (EJA). *Modified to correct event type and to add document numbers on 11/17/2015 (EJA). (Entered: 11/16/2015)
11/18/2015	<a href="#">81</a>	MOTION to Intervene by Navajo Nation Department of Justice. (Belzowski, Katherine) (Entered: 11/18/2015)
11/18/2015	<a href="#">82</a>	*(See Doc. 207) -- LODGED Proposed MOTION to Dismiss for Failure to State a Claim re: {81] Motion to Intervene. Document to be filed by Clerk if Motion to Intervene is granted. Filed by Navajo Nation Department of Justice. (Belzowski, Katherine) Modified on 11/19/2015 (LSP). Modified on 9/14/2016 (LSP). (Entered: 11/18/2015)
11/18/2015	<a href="#">83</a>	ORDER granting <a href="#">57</a> unopposed Motion of National Congress of American Indians, etc., for Leave to File Brief as Amici Curiae. The Clerk shall file the proposed brief (Doc. <a href="#">59</a> ). IT IS FURTHER ORDERED granting <a href="#">50</a> the unopposed Motion of Casey Family Programs, et al., for Leave to File Brief of Amici Curiae. The Clerk shall file the proposed brief (Doc. <a href="#">51</a> ). Signed by Judge Neil V Wake on 11/18/15.(LSP) (Entered: 11/18/2015)
11/18/2015	<a href="#">84</a>	AMICUS CURIAE BRIEF by Movants Annie E. Casey Foundation, Casey Family Programs, Center for the Study of Social Policy, Child Welfare League of America, Children's Defense Fund, Donaldson Adoption Institute, First Focus Campaign for Children, FosterClub, Generations United, National Alliance of Children's Trust and Prevention Funds, National Center on Adoption and Permanency, North American Council on Adoptable Children, W. Haywood Burns Institute. (LSP) (Entered: 11/18/2015)
11/18/2015	<a href="#">85</a>	AMICUS CURIAE BRIEF by Movants Association on American Indian Affairs, National Congress of American Indians, National Indian Child Welfare Association. (LSP) (Entered: 11/18/2015)
11/20/2015	<a href="#">86</a>	*(Filed at Doc. <a href="#">108</a> )--LODGED Proposed BRIEFOFTHECITIZENSEQUAL RIGHTSALLIANCEASAMICUS CURIAEINSUPPORTOFTHE MOTIONTOCERTIFYTHECLASSACTION. Document to be filed by Clerk if Motion or Stipulation for Leave to File or Amend is granted. Filed by CITIZENS EQUAL RIGHTS ALLIANCE. (Kielsky, Michael) Modified on 12/9/2015 (LSP). (Entered: 11/20/2015)
11/21/2015	<a href="#">87</a>	MOTION for Leave to File AMICUS CURIAE BRIEF by CITIZENS EQUAL RIGHTS FOUNDATION. (Attachments: # <a href="#">1</a> Text of Proposed Order Proposed Order)(Kielsky, Michael) (Entered: 11/21/2015)
11/25/2015	<a href="#">88</a>	*RESPONSE re: <a href="#">59</a> Lodged Proposed Document, <a href="#">84</a> & <a href="#">85</a> Brief (Non Appeal) <i>Amici Curiae Briefs</i> by Plaintiffs Carol Coghlan Carter, Unknown Party, Unknown Party, Unknown Party, Unknown Party. (Dynar, Aditya) *Modified to add document number on 11/30/2015 (KGM). (Entered: 11/25/2015)
12/04/2015	<a href="#">89</a>	MOTION for Leave to File Excess Pages by Gregory McKay. (Attachments: # <a href="#">1</a> Text of Proposed Order)(Lento, Gary) (Entered: 12/04/2015)
12/04/2015	<a href="#">90</a>	*(Filed at Doc. <a href="#">101</a> )--LODGED Proposed Reply to Plaintiffs' Consolidated Response to Defendants' Motion to Abstain and Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1), (6) re: <a href="#">70</a> MOTION to Dismiss for Lack of JurisdictionMOTION to Dismiss for Failure to State a Claim. Document to be filed by Clerk if Motion or Stipulation for Leave to File or

		Amend is granted. Filed by Gregory McKay. (Lento, Gary) Modified on 12/8/2015 (LSP). (Entered: 12/04/2015)
12/04/2015	91	ORDER:: IT IS ORDERED that State Defendants submit a proposed form of order that is not on law firm stationery, in compliance with Local Rule 7.1(b)(3) re: <a href="#">89</a> MOTION for Leave to File Excess Pages. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (NVW, vg) (Entered: 12/04/2015)
12/04/2015	<a href="#">92</a>	Additional Attachments to Main Document re: <a href="#">89</a> MOTION for Leave to File Excess Pages , 91 Order by Defendant Gregory McKay. (Attachments: # <a href="#">1</a> Text of Proposed Order Proposed Order)(Lento, Gary) (Entered: 12/04/2015)
12/04/2015	<a href="#">93</a>	*Additional Attachments to Main Document re: <a href="#">89</a> MOTION for Leave to File Excess Pages by Defendant Gregory McKay. (Attachments: # <a href="#">1</a> Text of Proposed Order Proposed Order)(Lento, Gary) *Document duplicate of entry of (Doc. <a href="#">92</a> ). Modified on 12/7/2015 (LSP). (Entered: 12/04/2015)
12/04/2015	<a href="#">94</a>	*AMENDED DOCUMENT re <a href="#">92</a> and <a href="#">93</a> Additional Attachments to Main Document re: <a href="#">89</a> MOTION for Leave to File Excess Pages by Defendant Gregory McKay. (Attachments: # <a href="#">1</a> Text of Proposed Order Proposed Order)(Lento, Gary) *Modified to correct event type and to add document numbers on 12/7/2015 (LSP). (Entered: 12/04/2015)
12/04/2015	<a href="#">95</a>	MOTION for Leave to File Excess Pages for Reply Memorandum by Sally Jewell, Kevin Washburn. (Attachments: # <a href="#">1</a> Text of Proposed Order)(Miskinis, Steven) (Entered: 12/04/2015)
12/04/2015	<a href="#">96</a>	*(Filed at Doc. <a href="#">106</a> )--LODGED Proposed Reply Memorandum in support of Motion to Dismiss re: <a href="#">95</a> MOTION for Leave to File Excess Pages for Reply Memorandum , <a href="#">68</a> MOTION to Dismiss for Lack of JurisdictionMOTION to Dismiss for Failure to State a Claim. Document to be filed by Clerk if Motion or Stipulation for Leave to File or Amend is granted. Filed by Sally Jewell, Kevin Washburn. (Miskinis, Steven) Modified on 12/8/2015 (LSP). (Entered: 12/04/2015)
12/07/2015	<a href="#">97</a>	RESPONSE in Opposition re: <a href="#">81</a> MOTION to Intervene filed by Carol Coghlan Carter, Unknown Party(named as J.H., a married couple ), Unknown Party(named as M.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as K.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as S.H., a married couple). (Attachments: # <a href="#">1</a> Exhibit 2)(Dynar, Aditya) (Entered: 12/07/2015)
12/07/2015	<a href="#">98</a>	MOTION to Seal Document by Carol Coghlan Carter, Unknown Party(named as J.H., a married couple ), Unknown Party(named as M.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as K.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as S.H., a married couple). (Attachments: # <a href="#">1</a> Text of Proposed Order)(Dynar, Aditya) (Entered: 12/07/2015)
12/07/2015	<a href="#">99</a>	*FILED at Doc. <a href="#">104</a> *SEALED LODGED Proposed Ex. 1 to Plaintiffs' Opposition to Navajo Nation's Motion to Intervene - Nov. 21, 2015 Order of Adoption re: <a href="#">98</a> MOTION to Seal Document . Document to be filed by Clerk if Motion or Stipulation to Seal is granted. Filed by Carol Coghlan Carter, Unknown Party(named as J.H., a married couple ), Unknown Party(named as M.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as K.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as S.H., a married couple). (Dynar, Aditya) *Modified on 12/8/2015 (MAP)*. (Entered: 12/07/2015)

12/08/2015	<a href="#">100</a>	ORDER granting <a href="#">89</a> State Defendant's Motion for Leave to File Excess Pages and directing the Clerk to file State Defendant's lodged proposed Reply (Doc. <a href="#">90</a> ). Signed by Judge Neil V Wake on 12/7/15.(LSP) (Entered: 12/08/2015)
12/08/2015	<a href="#">101</a>	REPLY to Response to Motion re: <a href="#">70</a> MOTION to Dismiss for Lack of Jurisdiction and MOTION to Dismiss for Failure to State a Claim filed by Gregory McKay. (LSP) (Entered: 12/08/2015)
12/08/2015	102	ORDER: IT IS ORDERED that any party to the Motions to Intervene (Docs. <a href="#">47</a> , <a href="#">81</a> ) who requests oral argument on those motions so advise the Court by December 11, 2015 at 5:00 p.m. The Court is not requesting oral argument on those motions. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (NVW, vg) (Entered: 12/08/2015)
12/08/2015	<a href="#">103</a>	ORDER granting <a href="#">98</a> Motion to Seal Exhibit 1 to Plaintiffs' Opposition to Navajo Nation's Motion to Intervene. Signed by Judge Neil V Wake on 12/8/15.(MAP) (Entered: 12/08/2015)
12/08/2015	<a href="#">104</a>	Sealed Exhibit to <a href="#">97</a> Opposition to Navajo Nation's Motion to Intervene filed by Carol Coghlan Carter. (MAP) (Entered: 12/08/2015)
12/08/2015	<a href="#">105</a>	ORDER granting <a href="#">95</a> Federal Defendants' Motion for Leave to File Excess Pages and directing the Clerk to file the Lodged Proposed Reply (Doc. <a href="#">96</a> ). Signed by Judge Neil V Wake on 12/8/15.(LSP) (Entered: 12/08/2015)
12/08/2015	<a href="#">106</a>	REPLY to Response to Motion re: <a href="#">68</a> MOTION to Dismiss for Lack of Jurisdiction and MOTION to Dismiss for Failure to State a Claim filed by Sally Jewell, Kevin Washburn. (LSP) (Entered: 12/08/2015)
12/09/2015	<a href="#">107</a>	ORDER granting <a href="#">87</a> Citizens Equal Rights Foundation's Motion for Leave to File. The Clerk shall file the proposed brief previously lodged (Doc. <a href="#">86</a> ). Signed by Judge Neil V Wake on 12/9/15.(LSP) (Entered: 12/09/2015)
12/09/2015	<a href="#">108</a>	AMICUS CURIAE BRIEF in support of Motion to Certify Class Action by Amicus Citizens Equal Rights Foundation. (LSP) (Entered: 12/09/2015)
12/09/2015	<a href="#">109</a>	NOTICE re: Supplemental Authority in Support of Plaintiffs' Response to Defendants' Motions to Dismiss by Carol Coghlan Carter, Unknown Party(named as J.H., a married couple ), Unknown Party(named as M.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as K.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as S.H., a married couple) re: <a href="#">80</a> Reply . (Attachments: # <a href="#">1</a> Exhibit 1)(Dynar, Aditya) (Entered: 12/09/2015)
12/10/2015	<a href="#">110</a>	NOTICE re: Supplemental Authorities by Sally Jewell, Kevin Washburn . (Attachments: # <a href="#">1</a> Exhibit)(Ennis, Christine) (Entered: 12/10/2015)
12/11/2015	<a href="#">111</a>	NOTICE of Errata re: <a href="#">108</a> Brief (Non Appeal) by Amicus Citizens Equal Rights Foundation.. (Kielsky, Michael) (Entered: 12/11/2015)
12/11/2015	<a href="#">112</a>	NOTICE re: Supplemental Authority by Gregory McKay re: <a href="#">70</a> MOTION to Dismiss for Lack of JurisdictionMOTION to Dismiss for Failure to State a Claim . (Attachments: # <a href="#">1</a> Exhibit)(Lento, Gary) (Entered: 12/11/2015)
12/11/2015	<a href="#">113</a>	REQUEST re: Oral Argument Requested by Intervenor Defendant Navajo Nation Department of Justice. (Belzowski, Katherine) (Entered: 12/11/2015)
12/14/2015	114	MINUTE ORDER: IT IS ORDERED setting oral argument on the Navajo Nation's Motion to Intervene <a href="#">81</a> for 12/18/2015 at 1:30 PM in Courtroom 504, 401 West

		Washington Street, Phoenix, AZ 85003 before Judge Neil V.Wake. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (NVW, vg) (Entered: 12/14/2015)
12/14/2015	<a href="#">115</a>	RESPONSE re: <a href="#">112</a> Notice (Other), <a href="#">110</a> Notice (Other) of <i>Supplemental Authorities</i> by Plaintiffs Carol Coghlan Carter, Unknown Party, Unknown Party, Unknown Party, Unknown Party. (Dynar, Aditya) (Entered: 12/14/2015)
12/14/2015	<a href="#">116</a>	REPLY to Response to Motion re: <a href="#">81</a> MOTION to Intervene filed by Navajo Nation Department of Justice. (Belzowski, Katherine) (Entered: 12/14/2015)
12/15/2015	<a href="#">117</a>	NOTICE of Appearance by Melanie Grace McBride on behalf of Gregory McKay. (McBride, Melanie) (Entered: 12/15/2015)
12/15/2015	<a href="#">118</a>	NOTICE OF ATTORNEY APPEARANCE: Christine W. Ennis appearing for Sally Jewell, Kevin Washburn. . (Ennis, Christine) (Entered: 12/15/2015)
12/18/2015	<a href="#">119</a>	MINUTE ENTRY for proceedings held before Judge Neil V. Wake: Oral Argument held on 12/18/15. Preliminary matters discussed. Counsel argue their respective positions regarding the pending motions. Motions taken under advisement. Written order to follow.  APPEARANCES: Michael Kirk, Clint Bolick and Aditya Dynar for Plaintiffs. Steven Miskinis, Christine Ennis, Gary Lento, Dawn Williams and Melanie McBride for Defendants. Katherine Belzowski for Intervenor Defendant. (Court Reporter Laurie Adams.) Hearing held 1:38 p.m. to 4:46 p.m. (with a recess from 3:19 p.m. to 3:33 p.m.) This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (NKS) (Entered: 12/18/2015)
12/21/2015	<a href="#">120</a>	TRANSCRIPT REQUEST by Gregory McKay for proceedings held on December 18, 2015, Judge Neil V Wake hearing judge(s). (Lento, Gary) (Entered: 12/21/2015)
12/24/2015	<a href="#">122</a>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of <i>Motion Hearing</i> Proceedings held on 12/18/2015, before Judge Neil V. Wake. Court Reporter Laurie Adams. The ordering party will have electronic access to the transcript immediately. All others may view the transcript at the court public terminal or it may be purchased through the Court Reporter by filing a Transcript Order Form on the docket before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 1/14/2016. Redacted Transcript Deadline set for 1/25/2016. Release of Transcript Restriction set for 3/23/2016. (RCO) (Entered: 12/29/2015)
12/29/2015	<a href="#">121</a>	TRANSCRIPT REQUEST by Carol Coghlan Carter, Unknown Party(named as J.H., a married couple ), Unknown Party(named as M.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as K.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as S.H., a married couple) for proceedings held on 12/18/2015, Judge Neil V Wake hearing judge(s). (Dynar, Aditya) (Entered: 12/29/2015)
12/29/2015	<a href="#">123</a>	TRANSCRIPT REQUEST by Gila River Indian Community for proceedings held on 12/18/2015, Judge Neil V Wake hearing judge(s). (Murphy, Thomas) (Entered: 12/29/2015)
01/05/2016	<a href="#">124</a>	TRANSCRIPT REQUEST by Association on American Indian Affairs, National Congress of American Indians, National Indian Child Welfare Association for proceedings held on 12/18/2015, Judge Neil V Wake hearing judge(s). (Daughety, Samuel) (Entered: 01/05/2016)
01/06/2016	<a href="#">125</a>	NOTICE of Appearance by Melanie Grace McBride on behalf of Gregory McKay. (McBride, Melanie) (Entered: 01/06/2016)



01/08/2016	<a href="#">126</a>	MOTION to Withdraw as Attorney by Carol Coghlan Carter, Unknown Party(named as J.H., a married couple ), Unknown Party(named as M.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as K.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as S.H., a married couple). (Attachments: # <a href="#">1</a> Text of Proposed Order Proposed Order)(Dynar, Aditya) (Entered: 01/08/2016)
01/12/2016	<a href="#">127</a>	ORDER that the Application (Doc. <a href="#">126</a> ) is granted. FURTHER ORDERED that attorney Clint Bolick will henceforth not be an attorney of record in this case. FURTHER ORDERED directing the Clerk of the Court to make appropriate changes in the Courts CM/ECF System to reflect this change. Signed by Judge Neil V. Wake on 1/11/16. (NKS) (Entered: 01/12/2016)
01/19/2016	<a href="#">128</a>	NOTICE re: Second Notice of Supplemental Authority by Sally Jewell, Kevin Washburn . (Attachments: # <a href="#">1</a> Exhibit)(Ennis, Christine) (Entered: 01/19/2016)
01/20/2016	<a href="#">129</a>	RESPONSE re: <a href="#">128</a> Notice (Other) to Federal Defendants' Second Notice of Supplemental Authority by Plaintiffs Carol Coghlan Carter, Unknown Party, Unknown Party, Unknown Party, Unknown Party. (Dynar, Aditya) (Entered: 01/20/2016)
01/20/2016	<a href="#">130</a>	NOTICE of Service of Discovery filed by Sally Jewell, Kevin Washburn. (Miskinis, Steven) (Entered: 01/20/2016)
01/25/2016	<a href="#">131</a>	NOTICE of Service of Discovery filed by Carol Coghlan Carter. (Dynar, Aditya) (Entered: 01/25/2016)
02/01/2016	<a href="#">132</a>	STIPULATION <i>JOINT STIPULATION AND ORDER FOR PROTECTION OF PRIVILEGED AND CONFIDENTIAL MATERIAL</i> by Gregory McKay. (Attachments: # <a href="#">1</a> Text of Proposed Order Proposed Order)(McBride, Melanie) (Entered: 02/01/2016)
02/02/2016	<a href="#">133</a>	PROTECTIVE ORDER - granting the parties' Stipulation (Doc. <a href="#">132</a> ). FURTHER ORDERED as follows (see order for complete details). Signed by Judge Neil V. Wake on 2/2/16. (NKS) (Entered: 02/02/2016)
02/04/2016	<a href="#">134</a>	NOTICE of Service of Discovery filed by Carol Coghlan Carter, Unknown Party(named as J.H., a married couple ), Unknown Party(named as M.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as K.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as S.H., a married couple). (Dynar, Aditya) (Entered: 02/04/2016)
02/05/2016	<a href="#">135</a>	MOTION to Seal Document <i>State Defendant's Second Notice of Supplemental Authority in Support of its Motion to Abstain and Dismiss</i> by Gregory McKay. (Attachments: # <a href="#">1</a> Text of Proposed Order Order)(McBride, Melanie) (Entered: 02/05/2016)
02/05/2016	<a href="#">136</a>	*FILED at Doc. <a href="#">141</a> *SEALED LODGED Proposed State Defendant's Second Notice of Supplemental Authority in Support of its Motion to Abstain and Dismiss re: <a href="#">135</a> MOTION to Seal Document <i>State Defendant's Second Notice of Supplemental Authority in Support of its Motion to Abstain and Dismiss</i> . Document to be filed by Clerk if Motion or Stipulation to Seal is granted. Filed by Gregory McKay. (McBride, Melanie) *Modified on 2/8/2016 (MAP)*. (Entered: 02/05/2016)
02/08/2016	<a href="#">137</a>	RESPONSE re: <a href="#">136</a> Sealed Lodged Proposed Document <i>McKay's Second Notice of Supplemental Authority in Support of Its Motion to Abstain and Dismiss</i> by Plaintiffs Carol Coghlan Carter, Unknown Party, Unknown Party, Unknown Party, Unknown Party. (Dynar, Aditya) (Entered: 02/08/2016)
02/08/2016	<a href="#">138</a>	MOTION to Seal Document <i>Exhibits to Plaintiffs' Response to State Defendant's Second</i>

		<i>Notice of Supplemental Authority in Support of Its Motion to Abstain and Dismiss</i> by Carol Coghlan Carter, Unknown Party(named as J.H., a married couple ), Unknown Party(named as M.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as K.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as S.H., a married couple). (Attachments: # <a href="#">1</a> Text of Proposed Order) (Dynar, Aditya) (Entered: 02/08/2016)
02/08/2016	<a href="#">139</a>	*FILED at Doc. <a href="#">143</a> *SEALED LODGED Proposed Exhibits to Plaintiffs' Response to State Defendant's Second Notice of Supplemental Authority in Support of Its Motion to Abstain and Dismiss re: <a href="#">138</a> MOTION to Seal Document <i>Exhibits to Plaintiffs' Response to State Defendant's Second Notice of Supplemental Authority in Support of Its Motion to Abstain and Dismiss</i> . Document to be filed by Clerk if Motion or Stipulation to Seal is granted. Filed by Carol Coghlan Carter, Unknown Party(named as J.H., a married couple ), Unknown Party(named as M.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as K.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as S.H., a married couple). (Dynar, Aditya) *Modified on 2/12/2016 (MAP)*. (Entered: 02/08/2016)
02/08/2016	<a href="#">140</a>	ORDER granting <a href="#">135</a> Motion to Seal Second Notice of Supplemental Authority in Support of its Motion to Abstain and Dismiss. Signed by Judge Neil V Wake on 2/8/16. (MAP) (Entered: 02/08/2016)
02/08/2016	<a href="#">141</a>	Sealed Second Notice of Supplemental Authority in Support of its Motion to Abstain and Dismiss by Gregory McKay. (MAP) (Entered: 02/08/2016)
02/12/2016	<a href="#">142</a>	ORDER granting <a href="#">138</a> Motion to Seal Exhibits to Plaintiffs' Response to State Defendant's Second Notice of Supplemental Authority in Support of Its Motion to Abstain and Dismiss. Signed by Judge Neil V Wake on 2/11/16.(MAP) (Entered: 02/12/2016)
02/12/2016	<a href="#">143</a>	Sealed Exhibits to <a href="#">137</a> Plaintiffs' Response to State Defendant's Second Notice of Supplemental Authority in Support of Its Motion to Abstain and Dismiss by Carol Coghlan Carter, Unknown Party (named as J.H., a married couple ), Unknown Party(named as M.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as K.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as S.H., a married couple). (MAP) (Entered: 02/12/2016)
02/18/2016	<a href="#">144</a>	NOTICE of Service of Discovery filed by Carol Coghlan Carter, Unknown Party(named as J.H., a married couple ), Unknown Party(named as M.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as K.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as S.H., a married couple). (Dynar, Aditya) (Entered: 02/18/2016)
02/22/2016	<a href="#">145</a>	ORDER that by 02/29/16, Plaintiffs file a status report that includes whether and when they plan to amend their Complaint and add additional plaintiffs. See order for details. Signed by Judge Neil V. Wake on 2/22/16. (NKS) (Entered: 02/22/2016)
02/26/2016	<a href="#">146</a>	NOTICE of Service of Discovery filed by Carol Coghlan Carter, Unknown Party(named as J.H., a married couple ), Unknown Party(named as M.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as K.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as S.H., a married couple). (Dynar, Aditya) (Entered: 02/26/2016)

02/26/2016	<a href="#">147</a>	MOTION for Admission Pro Hac Vice as to attorney Kent Campbell by Carol Coghlan Carter, Unknown Party(named as J.H., a married couple ), Unknown Party(named as M.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as K.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as S.H., a married couple). (Attachments: # <a href="#">1</a> Text of Proposed Order)(Dynar, Aditya) (Entered: 02/26/2016)
02/26/2016	<a href="#">148</a>	MOTION Suspension of Local Rule 83.1(b)(2) re: <a href="#">147</a> MOTION for Admission Pro Hac Vice as to attorney Kent Campbell by Carol Coghlan Carter, Unknown Party(named as J.H., a married couple ), Unknown Party(named as M.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as K.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as S.H., a married couple). (Attachments: # <a href="#">1</a> Text of Proposed Order)(Dynar, Aditya) (Entered: 02/26/2016)
02/29/2016	<a href="#">149</a>	STATUS REPORT by Carol Coghlan Carter, Unknown Party(named as J.H., a married couple ), Unknown Party(named as M.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as K.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as S.H., a married couple). (Dynar, Aditya) (Entered: 02/29/2016)
03/02/2016	<a href="#">150</a>	MOTION to Amend/Correct <a href="#">1</a> Complaint by Carol Coghlan Carter, Unknown Party(named as J.H., a married couple ), Unknown Party(named as M.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as K.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as S.H., a married couple). (Attachments: # <a href="#">1</a> Exhibit 1, # <a href="#">2</a> Exhibit 2, # <a href="#">3</a> Text of Proposed Order)(Dynar, Aditya) (Entered: 03/02/2016)
03/02/2016	<a href="#">151</a>	MEMORANDUM (re: Doc. <a href="#">150</a> ) - If the amended complaint is permitted and any party wishes to challenge it by motion to dismiss, parties may incorporate by reference the briefing on the pending motions. They may supplement with additional briefing based on the circumstances of any new plaintiff. Signed by Judge Neil V. Wake on 3/2/16. (NKS) (Entered: 03/02/2016)
03/03/2016	<a href="#">152</a>	* MOTION for Issuance of Order for release of certain State records by Kevin Washburn and Sally Jewell. (Attachments: # <a href="#">1</a> Exhibit Proposed Order)(Miskinis, Steven) *Modified to add filer on 3/4/2016 (REK). (Entered: 03/03/2016)
03/03/2016	<a href="#">153</a>	MOTION to Seal Document <i>Exhibit A to proposed order for release of certain state records</i> by Sally Jewell, Kevin Washburn. (Attachments: # <a href="#">1</a> Exhibit proposed order) (Miskinis, Steven) (Entered: 03/03/2016)
03/03/2016	<a href="#">154</a>	RESPONSE to Motion re: <a href="#">152</a> MOTION for Issuance of Order for release of certain State records filed by Carol Coghlan Carter, Unknown Party(named as J.H., a married couple ), Unknown Party(named as M.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as K.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as S.H., a married couple). (Attachments: # <a href="#">1</a> Text of Proposed Order)(Dynar, Aditya) (Entered: 03/03/2016)
03/07/2016	<a href="#">155</a>	* (Filed at Doc. <a href="#">157</a> ) SEALED LODGED Proposed Exh. A to Proposed Order (ECF No. 152-1) re: <a href="#">153</a> MOTION to Seal Document <i>Exhibit A to proposed order for release of certain state records</i> . Document to be filed by Clerk if Motion or Stipulation to Seal is granted. Filed by Sally Jewell, Kevin Washburn. (Miskinis, Steven) Modified on 3/8/2016 (LAD). (Entered: 03/07/2016)

03/08/2016	<a href="#">156</a>	ORDER granting Federal Defendants' <a href="#">153</a> Motion to Seal. IT IS FURTHER ORDERED that the following lodged document be and is hereby sealed: Exhibit A to [Proposed] Order accompanying Federal Defendants' Motion to Enter an Order Authorizing Release of Certain State Records (Sealed/Lodged Doc. <a href="#">155</a> ). Signed by Judge Neil V Wake on 3/7/16. (LAD) (Entered: 03/08/2016)
03/08/2016	<a href="#">157</a>	Sealed Exhibit A to <a href="#">152</a> Proposed Order by Sally Jewell, Kevin Washburn. (LAD) (Entered: 03/08/2016)
03/09/2016	<a href="#">158</a>	NOTICE of Service of Discovery filed by Carol Coghlan Carter, Unknown Party(named as J.H., a married couple ), Unknown Party(named as M.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as K.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as S.H., a married couple). (Dynar, Aditya) (Entered: 03/09/2016)
03/15/2016	<a href="#">159</a>	ORDER that Kent N. Campbell's Applications for Admission to Practice Pro Hac Vice Pursuant to LRCiv 83.1(b)(2) and for Suspension of Local Rule 83.1(b)(2) (Doc. <a href="#">147</a> , <a href="#">148</a> ) are denied. See order for details. Signed by Judge Neil V. Wake on 3/15/16. (NKS) (Entered: 03/15/2016)
03/21/2016	<a href="#">160</a>	RESPONSE in Opposition re: <a href="#">150</a> MOTION to Amend/Correct <a href="#">1</a> Complaint filed by Sally Jewell, Kevin Washburn. (Miskinis, Steven) (Entered: 03/21/2016)
03/21/2016	<a href="#">161</a>	*** STRICKEN by Doc. 164 - RESPONSE to Motion re: <a href="#">152</a> MOTION for Issuance of Order for release of certain State records filed by Gregory McKay. (Attachments: # <a href="#">1</a> Text of Proposed Order Proposed Order)(McBride, Melanie) Modified on 3/22/2016 (NKS). (Entered: 03/21/2016)
03/21/2016	<a href="#">162</a>	RESPONSE in Opposition re: <a href="#">150</a> MOTION to Amend/Correct <a href="#">1</a> Complaint <i>STATE DEFENDANT'S OPPOSITION TO PLAINTIFFS' MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT</i> filed by Gregory McKay. (McBride, Melanie) (Entered: 03/21/2016)
03/21/2016	<a href="#">163</a>	*Motion to Seal Document Exhibit A to State Defendants' Proposed Order for Release of Certain State Records. Filed by Gregory McKay. (Attachments: # <a href="#">1</a> Text of Proposed Order Text of Proposed Order, # <a href="#">2</a> Exhibit Exhibit A)(McBride, Melanie) *Modified from lodged to filed per case manager on 3/22/2016 (SCH). *Modified on 3/22/2016; EXHIBIT A filed at <a href="#">167</a> * (REW). (Entered: 03/21/2016)
03/22/2016	<a href="#">164</a>	ORDER: IT IS ORDERED that State Defendant's Response to Federal Defendants' Motion to Authorize Release of Certain State Records (Doc. <a href="#">161</a> ) is stricken for failure to comply in footnotes with the minimum print size requirement of the Local Rules, with leave to refile. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (NKS) (Entered: 03/22/2016)
03/22/2016	<a href="#">165</a>	RESPONSE to Motion re: <a href="#">152</a> MOTION for Issuance of Order for release of certain State records filed by Gregory McKay. (Attachments: # <a href="#">1</a> Text of Proposed Order Proposed Order)(McBride, Melanie) (Entered: 03/22/2016)
03/22/2016	<a href="#">166</a>	ORDER: granting the State Defendant's Motion for Leave to File Document Under Seal <a href="#">163</a> ; the following lodged document is hereby sealed: Exhibit A (lodged at <a href="#">163</a> ) to proposed order accompanying State Defendant's Response to Motion for Issuance <a href="#">165</a> -1. Signed by Judge Neil V Wake on 3/22/16.(REW) (Entered: 03/22/2016)
03/22/2016	<a href="#">167</a>	Sealed EXHIBIT A by Gregory McKay, re: proposed order accompanying State Defendant's Response to Motion for Issuance <a href="#">165</a> (REW) (Entered: 03/22/2016)
03/31/2016	<a href="#">168</a>	NOTICE of Service of Discovery filed by Sally Jewell, Kevin Washburn. (Miskinis,

		Steven) (Entered: 03/31/2016)
03/31/2016	<a href="#">169</a>	REPLY to Response to Motion re: <a href="#">150</a> MOTION to Amend/Correct <a href="#">1</a> Complaint filed by Carol Coghlan Carter, Unknown Party(named as J.H., a married couple ), Unknown Party(named as M.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as K.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as S.H., a married couple). (Attachments: # <a href="#">1</a> Exhibit 1)(Dynar, Aditya) (Entered: 03/31/2016)
03/31/2016	<a href="#">170</a>	REPLY to Response to Motion re: <a href="#">152</a> MOTION for Issuance of Order for release of certain State records filed by Sally Jewell, Kevin Washburn. (Miskinis, Steven) (Entered: 03/31/2016)
03/31/2016	<a href="#">171</a>	NOTICE of Service of Discovery filed by Gregory McKay. (Lento, Gary) (Entered: 03/31/2016)
04/04/2016	<a href="#">172</a>	ORDER that Plaintiffs' Motion for Leave to File First Amended Complaint (Doc. <a href="#">150</a> ) is granted. The Clerk will file the First Amended Civil Rights Class Action Complaint for Declaratory, Injunctive, and Other Relief lodged as Exhibit 1 to the Motion (Doc. <a href="#">150</a> -1). FURTHER ORDERED that Federal Defendants' Motion to Dismiss (Doc. <a href="#">68</a> ) and State Defendant's Motion to Abstain and Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1), (6) (Doc. <a href="#">70</a> ) are denied without prejudice as moot. See order for details. Signed by Judge Neil V. Wake on 4/4/16. (NKS) (Entered: 04/04/2016)
04/05/2016	<a href="#">173</a>	AMENDED COMPLAINT against Sally Jewell, Gregory McKay, Kevin Washburn filed by Unknown Party(a married couple; for themselves and on behalf of a class of similarly-situated individuals), Unknown Party(named as J.H., a married couple ), Carol Coghlan Carter, Unknown Party(named as S.H., a married couple), Unknown Party(P.R., a married couple; for themselves and on behalf of a class of similiary-situated individuals), Unknown Party(named as M.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Ronald Federici, Unknown Party(named as K.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ). (EJA) (Entered: 04/05/2016)
04/06/2016	<a href="#">174</a>	NOTICE of Appearance by Christina Maria Sandefur on behalf of Carol Coghlan Carter, Ronald Federici, Unknown Party(a married couple; for themselves and on behalf of a class of similarly-situated individuals), Unknown Party(named as J.H., a married couple ), Unknown Party(named as S.H., a married couple), Unknown Party(P.R., a married couple; for themselves and on behalf of a class of similiary-situated individuals), Unknown Party(named as M.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as K.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ). (Sandefur, Christina) (Entered: 04/06/2016)
04/06/2016	<a href="#">175</a>	ORDER granting <a href="#">152</a> Motion for Order Authorizing the Release of Certain State Records. SEE ORDER FOR FULL DETAILS. Signed by Judge Neil V Wake on 4/6/16. (Attachments: # <a href="#">1</a> Exhibit (Sealed))(MAP) (Entered: 04/06/2016)
04/14/2016	<a href="#">176</a>	NOTICE re: Notice of Compliance with Order by Gregory McKay [DOCS. 175 and 175-1]. (Lento, Gary) (Entered: 04/14/2016)
04/20/2016	<a href="#">177</a>	NOTICE of Service of Discovery filed by Sally Jewell, Kevin Washburn. (Miskinis, Steven) (Entered: 04/20/2016)
04/22/2016	<a href="#">178</a>	*MOTION to Dismiss for Lack of Jurisdiction <i>and for failure to state a claim</i> by Sally Jewell, Kevin Washburn. (Miskinis, Steven). *Added MOTION to Dismiss for Failure to State a Claim on 5/23/2016 (ATD). (Entered: 04/22/2016)

04/22/2016	<a href="#">179</a>	*MOTION to Dismiss for Lack of Jurisdiction <i>Motion to Dismiss Plaintiffs' 1st Amended Civil Rights Complaint for Declaratory, Injunctive, and Other Relief [Doc. 173]</i> by Gregory McKay. (Lento, Gary) *Corrected event to a Motion to Dismiss for Lack of Jurisdiction and added MOTION to Dismiss for Failure to State a Claim on 5/23/2016 (ATD). (Entered: 04/22/2016)
05/02/2016	<a href="#">180</a>	MOTION to Expedite Ruling on Motion to Intervene as Defendant by Gila River Indian Community. (Attachments: # <a href="#">1</a> Exhibit Lodged Motion to Dismiss First Amended Complaint, # <a href="#">2</a> Text of Proposed Order)(Godfrey, Merrill) (Entered: 05/02/2016)
05/03/2016	<a href="#">181</a>	NOTICE of Service of Discovery filed by Gregory McKay. (Lento, Gary) (Entered: 05/03/2016)
05/09/2016	<a href="#">182</a>	MOTION for Leave to File <i>Amicus Memorandum in Opposition to Motions to Dismiss</i> by Ohio Attorney General. (Attachments: # <a href="#">1</a> Text of Proposed Order Proposed Order, # <a href="#">2</a> Exhibit Amicus Memorandum)(Hendershot, Michael) (Entered: 05/09/2016)
05/09/2016	<a href="#">183</a>	MOTION for Leave to File Excess Pages for for Plaintiffs' Combined Response to Defendants' Motions to Dismiss Amended Complaint by Carol Coghlan Carter, Ronald Federici, Unknown Party(a married couple; for themselves and on behalf of a class of similarly-situated individuals), Unknown Party(named as J.H., a married couple ), Unknown Party(named as S.H., a married couple), Unknown Party(P.R., a married couple; for themselves and on behalf of a class of similiary-situated individuals), Unknown Party(named as M.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as K.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ). (Attachments: # <a href="#">1</a> Text of Proposed Order)(Dynar, Aditya) (Entered: 05/09/2016)
05/09/2016	<a href="#">184</a>	* (Filed at Doc. <a href="#">187</a> ) LODGED Proposed Plaintiffs' Combined Response to State and Federal Defendants' Motions to Dismiss re: <a href="#">178</a> MOTION to Dismiss for Lack of Jurisdiction <i>and for failure to state a claim</i> , <a href="#">179</a> MOTION to Dismiss Case <i>Motion to Dismiss Plaintiffs' 1st Amended Civil Rights Complaint for Declaratory, Injunctive, and Other Relief [Doc. 173]</i> . Document to be filed by Clerk if Motion or Stipulation for Leave to File or Amend is granted. Filed by Carol Coghlan Carter, Ronald Federici, Unknown Party(a married couple; for themselves and on behalf of a class of similarly-situated individuals), Unknown Party(named as J.H., a married couple ), Unknown Party(named as S.H., a married couple), Unknown Party(P.R., a married couple; for themselves and on behalf of a class of similarly-situated individuals), Unknown Party(named as M.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as K.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ). (Dynar, Aditya) Modified on 5/10/2016 (LAD). (Entered: 05/09/2016)
05/10/2016	<a href="#">185</a>	ORDER granting the State of Ohio's Motion for Leave to File Amicus Memorandum in Opposition to Motions to Dismiss (Doc. <a href="#">182</a> ). FURTHER ORDERED that the State of Ohio may file its Amicus Memorandum lodged and attached as Doc. <a href="#">182</a> -2 on or before 05/13/16. Signed by Judge Neil V. Wake on 5/9/16. (NKS) (Entered: 05/10/2016)
05/10/2016	<a href="#">186</a>	ORDER granting <a href="#">183</a> Motion for Leave to File Excess Pages. IT IS FURTHER ORDERED directing the Clerk of the Court to file Plaintiffs' Combined Response to Defendants' Motions to Dismiss lodged at Doc. <a href="#">184</a> . Signed by Judge Neil V Wake on 5/9/16. (LAD) (Entered: 05/10/2016)
05/10/2016	<a href="#">187</a>	COMBINED RESPONSE to <a href="#">179</a> MOTION to Dismiss Plaintiffs' 1st Amended Civil Rights Complaint for Declaratory, Injunctive, and Other Relief [Doc. 173], <a href="#">178</a> MOTION to Dismiss for Lack of Jurisdiction <i>and for failure to state a claim</i> filed by Carol Coghlan Carter, Ronald Federici, Unknown Party(a married couple; for themselves and on behalf

		of a class of similarly-situated individuals), Unknown Party(named as J.H., a married couple ), Unknown Party(named as S.H., a married couple), Unknown Party(P.R., a married couple; for themselves and on behalf of a class of similiary-situated individuals), Unknown Party(named as M.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as K.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ). (LAD) (Entered: 05/10/2016)
05/10/2016	<a href="#">188</a>	NOTICE of Service of Discovery filed by Gregory McKay. (Lento, Gary) (Entered: 05/10/2016)
05/10/2016	<a href="#">189</a>	NOTICE re: of Compliance with Court Order - Service of Redacted Yavapai County Superior Court Records by Gregory McKay re: <a href="#">175</a> Order on Motion for Issuance . (Lento, Gary) (Entered: 05/10/2016)
05/10/2016	<a href="#">190</a>	NOTICE re: Notice of Compliance with Protective Order - Filing of Protective Order Agreements Re Redactions to the Maricopa and Yavapai County Superior Courts Records by Gregory McKay re: <a href="#">133</a> Protective Order . (Attachments: # <a href="#">1</a> Exhibit A - Maricopa County Superior Court Records, # <a href="#">2</a> Exhibit B - Yavapai Cty Records)(Lento, Gary) (Entered: 05/10/2016)
05/11/2016	<a href="#">191</a>	RESPONSE in Opposition re: <a href="#">178</a> MOTION to Dismiss for Lack of Jurisdiction <i>and for failure to state a claim</i> , <a href="#">68</a> MOTION to Dismiss for Lack of Jurisdiction MOTION to Dismiss for Failure to State a Claim filed by Ohio Attorney General. (Hendershot, Michael) (Entered: 05/11/2016)
05/13/2016	<a href="#">192</a>	ORDER that the Gila River Indian Community's Motion to Expedite Ruling on Its Motion to Intervene as Defendant (Doc. <a href="#">180</a> ) is denied. See order for details. Signed by Judge Neil V. Wake on 5/13/16. (NKS) (Entered: 05/13/2016)
05/20/2016	<a href="#">193</a>	REPLY to Response to Motion re: <a href="#">179</a> MOTION to Dismiss Case <i>Motion to Dismiss Plaintiffs' 1st Amended Civil Rights Complaint for Declaratory, Injunctive, and Other Relief [Doc. 173]</i> filed by Gregory McKay. (Lento, Gary) (Entered: 05/20/2016)
05/20/2016	<a href="#">194</a>	MOTION for Leave to File Excess Pages for Reply brief by Sally Jewell, Kevin Washburn. (Attachments: # <a href="#">1</a> Text of Proposed Order)(Miskinis, Steven) (Entered: 05/20/2016)
05/20/2016	<a href="#">195</a>	REPLY to Response to Motion re: <a href="#">178</a> MOTION to Dismiss for Lack of Jurisdiction <i>and for failure to state a claim</i> filed by Sally Jewell, Kevin Washburn. (Miskinis, Steven) (Entered: 05/20/2016)
05/23/2016	<a href="#">196</a>	ORDER granting the Federal Defendants' Motion (Doc. <a href="#">194</a> ). FURTHER ORDERED that the Federal Defendants' Reply (Doc. <a href="#">195</a> ), which was filed and not lodged, is considered filed as of 05/20/16. Signed by Judge Neil V. Wake on 5/23/16. (NKS) (Entered: 05/23/2016)
05/23/2016	<a href="#">197</a>	NOTICE of Service of Discovery filed by Carol Coghlan Carter, Ronald Federici, Unknown Party(a married couple; for themselves and on behalf of a class of similarly-situated individuals), Unknown Party(named as J.H., a married couple ), Unknown Party(named as S.H., a married couple), Unknown Party(P.R., a married couple; for themselves and on behalf of a class of similiary-situated individuals), Unknown Party(named as M.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as K.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ). (Dynar, Aditya) (Entered: 05/23/2016)
05/23/2016	<a href="#">198</a>	AMENDED MOTION to Intervene ( <i>Oral Arguement Requested</i> ) by Navajo Nation

		Department of Justice. (Belzowski, Katherine) (Entered: 05/23/2016)
05/23/2016	<a href="#">199</a>	*Filed at (Doc. <a href="#">218</a> ) LODGED PROPOSED DOCUMENT <i>AMENDED MOTION to Dismiss for Lack of Jurisdiction and MOTION to Dismiss for Failure to State a Claim (Lodge)</i> by Navajo Nation Department of Justice. (Belzowski, Katherine) Modified on 5/24/2016 (ATD). *Modified to correct event and added MOTION to Dismiss for Lack of Jurisdiction on 5/24/2016 (ATD). *Modified on 9/7/2016 to correct event to Lodged Proposed; Document to be filed in the event that <a href="#">198</a> is granted (ATD). *Modified on 9/29/2016 (DXD). (Entered: 05/23/2016)
05/27/2016	<a href="#">200</a>	RESPONSE to Motion re: <a href="#">198</a> MOTION to Intervene ( <i>Oral Argument Requested</i> ) filed by Carol Coghlan Carter, Ronald Federici, Unknown Party(a married couple; for themselves and on behalf of a class of similarly-situated individuals), Unknown Party(named as J.H., a married couple ), Unknown Party(named as S.H., a married couple), Unknown Party(P.R., a married couple; for themselves and on behalf of a class of similiary-situated individuals), Unknown Party(named as M.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as K.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ). (Dynar, Aditya) (Entered: 05/27/2016)
06/03/2016	<a href="#">201</a>	MOTION for Extension of Time to File Response/Reply by Navajo Nation Department of Justice. (Belzowski, Katherine) (Entered: 06/03/2016)
06/06/2016	<a href="#">202</a>	ORDER granting the Navajo Nation's Motion (Doc. <a href="#">201</a> ). FURTHER ORDERED the Navajo Nation may file its reply to Response to Motion to Intervene by close of business on 06/10/16. Signed by Judge Neil V. Wake on 6/3/16. (NKS) (Entered: 06/06/2016)
06/10/2016	<a href="#">203</a>	* REPLY in SUPPORT of <a href="#">81</a> Motion to Intervene by Intervenor Defendant Navajo Nation Department of Justice. (Belzowski, Katherine) * Modified to add document linkage on 6/13/2016 (LAD). (Entered: 06/10/2016)
06/17/2016	<a href="#">204</a>	NOTICE re: of Supplemental Authority by Sally Jewell, Kevin Washburn . (Miskinis, Steven) (Entered: 06/17/2016)
07/07/2016	<a href="#">205</a>	NOTICE of Attorney Withdrawal <i>Hyland Hunt</i> filed by Pratik A Shah. (Shah, Pratik) (Entered: 07/07/2016)
08/17/2016	<a href="#">206</a>	NOTICE of Service of Discovery filed by Carol Coghlan Carter, Unknown Party(a married couple; for themselves and on behalf of a class of similarly-situated individuals), Unknown Party(named as J.H., a married couple ), Unknown Party(named as S.H., a married couple), Unknown Party(P.R., a married couple; for themselves and on behalf of a class of similiary-situated individuals), Unknown Party(named as M.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as K.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ). (Dynar, Aditya) (Entered: 08/17/2016)
09/08/2016	207	ORDER: On November 18, 2015, the Navajo Nation filed a Motion to Intervene (Doc. <a href="#">81</a> ). After Plaintiffs amended their complaint on April 5, 2016, the Navajo Nation filed an Amended Motion to Intervene (Doc. <a href="#">198</a> ). IT IS THEREFORE ORDERED that the Navajo Nation's initial Motion to Intervene (Doc. <a href="#">81</a> ) is denied without prejudice to consideration of the Amended Motion to Intervene (Doc. <a href="#">198</a> ). This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (NVW, vg) (Entered: 09/08/2016)
09/08/2016	<a href="#">208</a>	ORDER that oral argument on the Motion of the Gila River Indian Community to Intervene as Defendant (Doc. <a href="#">47</a> ) and the Amended Motion to Intervene by the Navajo Nation (Doc. <a href="#">198</a> ) is set for 09/28/16, at 2:30 PM. FURTHER ORDERED that if the Gila River Indian Community or the Navajo Nation would like to waive oral argument on



		its motion, it may do so by filing notice by 09/16/16. Signed by Senior Judge Neil V. Wake on 9/8/16. (NKS) (Entered: 09/08/2016)
09/12/2016	<a href="#">209</a>	* MOTION for Issuance of Order for release of certain state appellate records and confidential records in possession of plaintiffs by Sally Jewell, Kevin Washburn. (Attachments: # <a href="#">1</a> Text of Proposed Order)(Miskinis, Steven) *Modified on 9/13/2016; document not in compliance of LR 7.1(a)* (REW). (Entered: 09/12/2016)
09/13/2016	<a href="#">210</a>	RESPONSE to Motion re: <a href="#">209</a> MOTION for Issuance of Order for release of certain state appellate records and confidential records in possession of plaintiffs filed by Carol Coghlan Carter, Ronald Federici, Unknown Party(a married couple; for themselves and on behalf of a class of similarly-situated individuals), Unknown Party(named as J.H., a married couple ), Unknown Party(named as S.H., a married couple), Unknown Party(P.R., a married couple; for themselves and on behalf of a class of similiary-situated individuals), Unknown Party(named as M.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as K.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ). (Dynar, Aditya) (Entered: 09/13/2016)
09/14/2016	<a href="#">211</a>	RESPONSE to Motion re: <a href="#">209</a> MOTION for Issuance of Order for release of certain state appellate records and confidential records in possession of plaintiffs filed by Gregory McKay. (Lento, Gary) (Entered: 09/14/2016)
09/27/2016	<a href="#">212</a>	NOTICE OF ATTORNEY APPEARANCE: JoAnn Kintz appearing for Sally Jewell, Kevin Washburn. . (Kintz, JoAnn) (Entered: 09/27/2016)
09/28/2016	213	MINUTE ENTRY for proceedings held before Senior Judge Neil V. Wake: Oral Argument held on 09/28/16. Counsel state their respective positions regarding the pending motions to intervene (Docs. <a href="#">47</a> , <a href="#">198</a> ). Motions taken under advisement. Written order to follow.  APPEARANCES: Aditya Dynar and Christina M. Sandefur for Plaintiffs. JoAnn L. Kintz and Gary N. Lento for Defendants. Merrill C. Godfrey, Thomas L. Murphy and Katherine C. Belzowski for Movants. (Court Reporter Liz Lemke.) Hearing held 2:37 p.m. to 4:43 p.m. (with a recess from 3:43 to 4:00) This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (NKS) (Entered: 09/28/2016)
09/29/2016	<a href="#">214</a>	TRANSCRIPT REQUEST by Carol Coghlan Carter, Ronald Federici, Unknown Party(a married couple; for themselves and on behalf of a class of similarly-situated individuals), Unknown Party(named as J.H., a married couple ), Unknown Party(P.R., a married couple; for themselves and on behalf of a class of similiary-situated individuals), Unknown Party(named as M.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as K.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as S.H., a married couple) for proceedings held on 9/28/2016, Judge Neil V Wake hearing judge(s). (Dynar, Aditya) (Entered: 09/29/2016)
09/29/2016	<a href="#">215</a>	TRANSCRIPT REQUEST by Gila River Indian Community for proceedings held on 09/28/2016, Judge Neil V Wake hearing judge(s). (Murphy, Thomas) (Entered: 09/29/2016)
09/29/2016	<a href="#">216</a>	ORDER granting for permissive intervention and denying with respect to intervention of right <a href="#">47</a> Defendant Gila River Indian Community's Motion to Intervene and <a href="#">198</a> Defendant Navajo Nation's Motion to Intervene. The Clerk is directed to file the Gila River Indian Community's proposed motion to dismiss (lodged as Doc. <a href="#">47</a> -1) and the Navajo Nation's proposed amended motion to dismiss (lodged as Doc. <a href="#">199</a> ). Signed by Senior Judge Neil V Wake on 9/29/16. (DXD) (Entered: 09/29/2016)

09/29/2016	<a href="#">217</a>	MOTION to Dismiss for Failure to State a Claim and MOTION to Dismiss for Lack of Jurisdiction by Gila River Indian Community. (DXD) (Entered: 09/29/2016)
09/29/2016	<a href="#">218</a>	AMENDED MOTION to Dismiss for Lack of Jurisdiction and MOTION to Dismiss for Failure to State a Claim by Navajo Nation. (DXD) (Entered: 09/29/2016)
09/29/2016	219	NOTICE TO FILER OF DEFICIENCY re: AO435 <a href="#">214</a> Transcript Request filed by Unknown Party, Ronald Federici, Carol Coghlan Carter. Item 18 - ORDER: E-mail address not provided where e-mail copy should be sent. <b>FOLLOW-UP ACTION REQUIRED:</b> Please refile and provide an email address for delivery. Deficiency must be corrected within one business day of this notice. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (RAP) (Entered: 09/29/2016)
09/29/2016	<a href="#">220</a>	AMENDED TRANSCRIPT REQUEST pursuant to 219 Notice of Deficiency by Carol Coghlan Carter, Ronald Federici, Unknown Party(a married couple; for themselves and on behalf of a class of similarly-situated individuals), Unknown Party(named as J.H., a married couple ), Unknown Party(P.R., a married couple; for themselves and on behalf of a class of similiary-situated individuals), Unknown Party(named as M.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as K.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as S.H., a married couple) for proceedings held on 9/28/2016, Judge Neil V Wake hearing judge(s). (Dynar, Aditya) (Entered: 09/29/2016)
09/30/2016	<a href="#">221</a>	TRANSCRIPT REQUEST by Gregory McKay for proceedings held on 9/29/16, Judge Neil V Wake hearing judge(s). (Lento, Gary) (Entered: 09/30/2016)
09/30/2016	222	NOTICE TO FILER OF DEFICIENCY re: AO435 <a href="#">221</a> Transcript Request filed by Gregory McKay. Item 17 - TRANSCRIPT REQUESTED: No court proceedings were transcribed or recorded for the requested date of proceeding of 09/29/2016. <b>FOLLOW-UP ACTION REQUIRED:</b> Please refile with a valid date of proceeding for transcription in Item 17. Deficiency must be corrected within one business day of this notice. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (RAP) (Entered: 09/30/2016)
10/03/2016	<a href="#">223</a>	TRANSCRIPT REQUEST by Gregory McKay for proceedings held on 9/28/16, Judge Neil V Wake hearing judge(s). (Lento, Gary) (Entered: 10/03/2016)
10/05/2016	<a href="#">224</a>	NOTICE of Appearance by Wendy Jacobsen Harrison on behalf of Gregory McKay. (Harrison, Wendy) (Entered: 10/05/2016)
10/13/2016	<a href="#">227</a>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of <i>ORAL ARGUMENT</i> proceedings held on 09/28/2016, before Judge Neil V. Wake. (Court Reporter: Elizabeth A. Lemke). The ordering party will have electronic access to the transcript immediately. All others may view the transcript at the court public terminal or it may be purchased through the Court Reporter/Transcriber by filing a Transcript Order Form on the docket before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 11/3/2016. Redacted Transcript Deadline set for 11/14/2016. Release of Transcript Restriction set for 1/11/2017. (RAP) (Entered: 10/14/2016)
10/14/2016	<a href="#">225</a>	First MOTION for Extension of Time to File Response/Reply as to <a href="#">218</a> MOTION to Dismiss for Lack of JurisdictionMOTION to Dismiss for Failure to State a Claim, <a href="#">217</a> MOTION to Dismiss for Failure to State a Claim MOTION to Dismiss for Lack of Jurisdiction by Carol Coghlan Carter, Ronald Federici, Unknown Party(a married couple; for themselves and on behalf of a class of similarly-situated individuals), Unknown Party(named as J.H., a married couple ), Unknown Party(P.R., a married couple; for

		themselves and on behalf of a class of similarly-situated individuals), Unknown Party(named as M.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as K.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as S.H., a married couple). (Attachments: # <a href="#">1</a> Text of Proposed Order) (Dynar, Aditya) (Entered: 10/14/2016)
10/14/2016	<a href="#">226</a>	ORDER: Before the Court is Plaintiffs' Unopposed First Motion for Extension of Time to Respond to Intervenor-Defendants' Motions to Dismiss (Doc. <a href="#">225</a> ). Plaintiffs request that their time to respond to the motions filed September 29, 2016, be extended to October 24, 2016. Because one or more of the grounds asserted in the motions to dismiss is a lack of subject matter jurisdiction, the time schedule for filing and service of responsive memoranda is the same as for motions for summary judgment, i.e., 30 days for a response. LRCiv 12.1(b), 56.1. Therefore, Plaintiffs are not required to file their responses before October 24, 2016. IT IS THEREFORE ORDERED that Plaintiffs' Unopposed First Motion for Extension of Time to Respond to Intervenor-Defendants' Motions to Dismiss (Doc. 225) is denied as unnecessary. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (vg) (Entered: 10/14/2016)
10/31/2016	<a href="#">228</a>	MOTION for Leave to File Excess Pages for Plaintiffs' Combined Response to Intervenor's Motions to Dismiss Amended Complaint by Carol Coghlan Carter, Ronald Federici, Unknown Party(a married couple; for themselves and on behalf of a class of similarly-situated individuals), Unknown Party(named as J.H., a married couple ), Unknown Party(P.R., a married couple; for themselves and on behalf of a class of similarly-situated individuals), Unknown Party(named as M.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as K.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as S.H., a married couple). (Attachments: # <a href="#">1</a> Text of Proposed Order)(Dynar, Aditya) (Entered: 10/31/2016)
10/31/2016	<a href="#">229</a>	*Filed at (Doc. <a href="#">232</a> LODGED Proposed Plaintiffs' Response to Navajo Nation's Amended Motion to Dismiss and Gila River Indian Community's Motion to Dismiss re: <a href="#">218</a> MOTION to Dismiss for Lack of JurisdictionMOTION to Dismiss for Failure to State a Claim, <a href="#">217</a> MOTION to Dismiss for Failure to State a Claim MOTION to Dismiss for Lack of Jurisdiction. Document to be filed by Clerk if Motion or Stipulation for Leave to File or Amend is granted. Filed by Carol Coghlan Carter, Ronald Federici, Unknown Party(a married couple; for themselves and on behalf of a class of similarly-situated individuals), Unknown Party(named as J.H., a married couple ), Unknown Party(P.R., a married couple; for themselves and on behalf of a class of similarly-situated individuals), Unknown Party(named as M.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as K.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as S.H., a married couple). (Dynar, Aditya) Modified on 11/3/2016 (EJA). (Entered: 10/31/2016)
11/02/2016	<a href="#">230</a>	NOTICE of Appearance by Paul Wesley Spruhan on behalf of Navajo Nation. (Spruhan, Paul) (Entered: 11/02/2016)
11/03/2016	<a href="#">231</a>	ORDER granting <a href="#">228</a> Motion for Leave to File Excess Pages. ORDERED directing the Clerk to file Plaintiffs' lodged Response (Doc. <a href="#">229</a> ). Signed by Senior Judge Neil V Wake on 11/3/16. (EJA) (Entered: 11/03/2016)
11/03/2016	<a href="#">232</a>	RESPONSE to Motion re: <a href="#">218</a> MOTION to Dismiss for Lack of JurisdictionMOTION to Dismiss for Failure to State a Claim and <a href="#">217</a> MOTION to Dismiss for Failure to State a Claim MOTION to Dismiss for Lack of Jurisdiction filed by Carol Coghlan Carter, Ronald Federici, Unknown Party(a married couple; for themselves and on behalf of a

		class of similarly-situated individuals), Unknown Party(named as J.H., a married couple ), Unknown Party(P.R., a married couple; for themselves and on behalf of a class of similiary-situated individuals), Unknown Party(named as M.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as K.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as S.H., a married couple). (EJA) (Entered: 11/03/2016)
11/10/2016	<a href="#">233</a>	*REPLY to Response to Motion re: <a href="#">218</a> AMENDED MOTION to Dismiss for Failure to State a Claim and MOTION to Dismiss for Lack of Jurisdiction filed by Navajo Nation. (Belzowski, Katherine) *Modified to correct document linkage from Doc. 199 to Doc. 218 on 11/14/2016 (ATD). (Entered: 11/10/2016)
11/21/2016	<a href="#">234</a>	REPLY to Response to Motion re: <a href="#">217</a> MOTION to Dismiss for Failure to State a Claim MOTION to Dismiss for Lack of Jurisdiction filed by Gila River Indian Community. (Godfrey, Merrill) (Entered: 11/21/2016)
11/30/2016	<a href="#">235</a>	ORDER that the Federal Defendants' Motion (Doc. <a href="#">209</a> ) is granted only to the extent stated in this order and otherwise denied. FURTHER ORDERED that the parties submit by 12/12/16, an agreed form of order to implement this ruling. See order for details. Signed by Senior Judge Neil V. Wake on 11/30/16. (NKS) (Entered: 11/30/2016)
12/12/2016	<a href="#">236</a>	NOTICE re: of submission of proposed order for release of certain state appellate records in accord with the Court's Order of November 30, 2016 by Sally Jewell, Kevin Washburn re: <a href="#">235</a> Order on Motion for Issuance . (Attachments: # <a href="#">1</a> Text of Proposed Order) (Miskinis, Steven) (Entered: 12/12/2016)
12/13/2016	<a href="#">237</a>	ORDER granting the parties' Motion (Doc. <a href="#">236</a> ). See order for complete details. Signed by Senior Judge Neil V. Wake on 12/13/16. (NKS) (Entered: 12/13/2016)
12/20/2016	<a href="#">238</a>	NOTICE re: replacement of 2015 BIA ICWA Guidelines by Sally Jewell, Kevin Washburn . (Miskinis, Steven) (Entered: 12/20/2016)
01/17/2017	<a href="#">239</a>	NOTICE of Service of Discovery filed by Carol Coghlan Carter, Ronald Federici. (Dynar, Aditya) (Entered: 01/17/2017)
01/20/2017	<a href="#">240</a>	*NOTICE of Compliance with Order (Dkt. 237) re: <a href="#">237</a> by Gregory McKay . (McBride, Melanie) *Modified on 1/23/2017 to add document linkage (ATD). (Entered: 01/20/2017)
01/20/2017	<a href="#">241</a>	NOTICE re: of Supplemental Authority by Gregory McKay re: <a href="#">179</a> MOTION to Dismiss for Lack of Jurisdiction MOTION to Dismiss for Failure to State a Claim . (Attachments: # <a href="#">1</a> Exhibit 1)(McBride, Melanie) (Entered: 01/20/2017)
01/20/2017	<a href="#">242</a>	*AMENDED DOCUMENT by Gregory McKay. Amendment to <a href="#">241</a> Notice (Other) <i>Amended Notice of Supplemental Authority in Support of Gregory McKay's <a href="#">179</a> Motion to Dismiss Plaintiffs' First Amended Civil Rights Complaint for Declaratory, Injunctive, and Other Relief.</i> (Attachments: # <a href="#">1</a> Exhibit 1)(McBride, Melanie) *Modified on 1/23/2017 to add document linkage to Doc. <a href="#">179</a> (ATD). (Entered: 01/20/2017)
01/23/2017	<a href="#">243</a>	RESPONSE re: <a href="#">242</a> Amended Document (NOT Motion/Complaint) <i>to State Defendant's Notice of Supplemental Authority</i> by Plaintiffs Carol Coghlan Carter, Ronald Federici. (Dynar, Aditya) (Entered: 01/23/2017)
03/16/2017	<a href="#">244</a>	ORDER granting <a href="#">178</a> Motion to Dismiss for Lack of Jurisdiction and Failure to State a Claim; <a href="#">179</a> Motion to Dismiss for Lack of Jurisdiction and Failure to State a Claim; <a href="#">217</a> Motion to Dismiss for Failure to State a Claim and Lack of Jurisdiction; <a href="#">218</a> Motion to Dismiss for Lack of Jurisdiction and Failure to State a Claim. The First Amended Civil Rights Class Action Complaint for Declaratory, Injunctive, and Other Relief (Doc. <a href="#">173</a> ) is dismissed for lack of standing. The Clerk shall enter judgment dismissing this action

		without prejudice for lack of jurisdiction and lack of standing. Signed by Senior Judge Neil V Wake on 3/16/17.(DXD) (Entered: 03/16/2017)
03/16/2017	<a href="#">245</a>	CLERK'S JUDGMENT - IT IS ORDERED AND ADJUDGED that pursuant to the Court's Order filed March 16, 2017, judgment of dismissal is entered without prejudice for lack of jurisdiction and lack of standing. (DXD) (Entered: 03/16/2017)
04/24/2017	<a href="#">246</a>	NOTICE OF APPEAL to 9th Circuit Court of Appeals re: <a href="#">244</a> Order on Motion to Dismiss/Lack of Jurisdiction, Order on Motion to Dismiss for Failure to State a Claim, <a href="#">245</a> Clerks Judgment by Carol Coghlan Carter, Ronald Federici, Unknown Party(a married couple; for themselves and on behalf of a class of similarly-situated individuals), Unknown Party(named as J.H., a married couple ), Unknown Party(P.R., a married couple; for themselves and on behalf of a class of similiary-situated individuals), Unknown Party(named as M.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as K.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as S.H., a married couple). Filing fee received: \$ 505.00, receipt number 0970-14153287. (Dynar, Aditya) (Entered: 04/24/2017)
04/26/2017	<a href="#">247</a>	USCA Case Number re: <a href="#">246</a> Notice of Appeal, Ninth Circuit Case number 17-15839. (LSP) (Entered: 04/26/2017)
05/10/2017	<a href="#">248</a>	APPEAL DOCUMENT by Carol Coghlan Carter, Ronald Federici, Unknown Party(a married couple; for themselves and on behalf of a class of similarly-situated individuals), Unknown Party(named as J.H., a married couple ), Unknown Party(P.R., a married couple; for themselves and on behalf of a class of similiary-situated individuals), Unknown Party(named as M.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as K.C., a married couple; for themselves and on behalf of a class of similarly-situated individuals ), Unknown Party(named as S.H., a married couple) re: <a href="#">246</a> Notice of Appeal <i>Certificate of No Transcript Order</i> . (Dynar, Aditya) (Entered: 05/10/2017)
05/15/2017	<a href="#">249</a>	NOTICE of Attorney Withdrawal <i>Melanie G. McBride</i> filed by Gary N Lento. (Lento, Gary) (Entered: 05/15/2017)

<b>PACER Service Center</b>			
<b>Transaction Receipt</b>			
08/28/2017 11:22:57			
<b>PACER Login:</b>	GWILegal:3370130:0	<b>Client Code:</b>	Carter v Washburn
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	2:15-cv-01259-NVW
<b>Billable Pages:</b>	30	<b>Cost:</b>	3.00

**Certificate of Service**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on this 1st day of September, 2017.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Kris Schlott  
Kris Schlott