

EXHIBIT C

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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

CALIFORNIA TRIBAL FAMILIES COALITION,
 YUOK TRIBE, CHEROKEE NATION, FACING
 FOSTER CARE ALASKA, ARK OF FREEDOM
 ALLIANCE, RUTH ELLIS CENTER, and TRUE
 COLORS, INC.,

Plaintiffs,

v.

XAVIER BECERRA, in his official capacity as
 Secretary of Health and Human Services,
 JOOYEUN CHANG, in her official capacity as
 Acting Assistant Secretary for the Administration for
 Children and Families, U.S. DEPARTMENT OF
 HEALTH AND HUMAN SERVICES, and
 ADMINISTRATION FOR CHILDREN AND
 FAMILIES,

Defendants.

Case No. 20-cv-6018 (MMC)

**DECLARATION OF
 LOU STRETCH
 IN SUPPORT OF PLAINTIFFS'
 MOTION FOR
 SUMMARY JUDGMENT**

DECLARATION OF LOU STRETCH ISO PLS.
 MOT. FOR SUMM. J. CASE NO. 20-cv-6018
 (MMC)

1 I, Lou Stretch, hereby state as follows:

2 1. The information set forth in this affidavit is based on my personal knowledge.

3 2. I am the Director of the Cherokee Indian Child Welfare Department and have been since
4 July 2019. In my position I oversee 102 staff, including 9 full-time employees to determine tribal
5 eligibility, 51 employees to handle state and tribal cases (including intake and child protective
6 services), 7 service providers, 13 foster care certification workers, 8 adoption and guardianship
7 workers, and 8 office support and title IV-E technical assistants. My duties include determining and
8 implementing the policy and development of Cherokee Nation Indian Child Welfare, ensuring the
9 maintenance of records, and seeking funding and oversight for grants.
10

11 3. Cherokee Nation's capital is located in Tahlequah, Oklahoma. The Cherokee Nation
12 Reservation encompasses all or part of fourteen counties in northeastern Oklahoma.
13

14 4. Cherokee Nation is the sovereign government of the Cherokee people and is the largest
15 tribe in the United States, with more than 380,000 tribal citizens residing across the country.

16 5. The Tribe's ICWA-eligible children live across North America.

17 6. Cherokee Nation is committed to protecting its inherent sovereignty; preserving and
18 promoting Cherokee culture, language, and values; and improving the quality of life for future
19 generations of Cherokee Nation citizens.
20

21 7. Cherokee Nation provides Indian Child Welfare services under a direct title IV-E plan,
22 including foster care and adoption services for Indian children. As part of that work, Cherokee
23 Nation engages in the following activities: (1) advocating for and establishing the safest and most
24 appropriate environment for the child; (2) providing referrals and networking services to parents
25 and children; (3) conducting home assessments to determine whether a child's living environment
26 is safe; (4) making recommendations to courts regarding a child's best interest; (5) providing expert
27 witness testimony in cases involving Cherokee Indian children; (6) monitoring case activity to
28

1 ensure compliance with ICWA and other relevant state and tribal laws; and (7) educating attorneys,
2 court-appointed guardians, and families on their rights and responsibilities within the judicial system
3 to ensure the protection of Cherokee children under federal and state law.

4 8. Cherokee Nation also has a nationwide Court Advocacy and Permanency Service
5 (“CAPS”) that provides advocacy for Cherokee families and children in tribal and state court
6 systems. To ensure that Cherokee Nation and its children receive the protections offered under
7 ICWA and similar state laws, the CAPS program sends advocates to court hearings on behalf of
8 Cherokee children, provides planning services, and helps refer children and families to services
9 designed to address problems that contributed to the initial removal of a child. These efforts
10 consume a substantial amount of resources, as they require our advocates to participate in court
11 hearings around the country.
12

13 9. Our efforts to advocate for Cherokee children and protect our rights are made far more
14 difficult and expensive by the lack of data on ICWA implementation and by states’ failures to
15 conduct the inquiries required by ICWA. The absence of this information impairs Cherokee Nation’s
16 ability to provide direct child welfare services to its children by impeding Cherokee Nation’s ability
17 to identify Cherokee children in state child welfare systems in a timely fashion. Indeed, our mission
18 and rights are often entirely thwarted by the unavailability of this information.
19

20 10. These harms come in numerous forms. First, Cherokee Nation is often not notified of the
21 removal of Cherokee children, or notified too late to be able to protect those children. For example,
22 the Cherokee Nation was not notified of a recent case in Missouri for six months after the children
23 were removed. The parents did not receive active efforts to prevent the breakup of the family (as
24 required by ICWA) and the children were placed in homes that did not comply with ICWA’s
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1 placement preferences.¹ By the time the Nation could move to transfer the case to tribal court, the
2 parents were unable to remedy the issues that led to the removal of the children. No child was
3 reunified in this case. If states were obligated to report data on the inquiries they made and other
4 steps they took under ICWA, implementation of ICWA's requirements would improve and errors
5 like these would be far less frequent.

6
7 11. Second, documentation errors may cause Cherokee children to be lost in state systems
8 for years or slip through the cracks altogether. For example, in a recent case where the child was
9 transferred to tribal court from Arkansas, the child had been marked as "non-Native" in the Arkansas
10 system, even though they were a Cherokee citizen. Such incidents would be less common and caught
11 more quickly if state child welfare agencies were required to report data on their inquiry efforts, and
12 if they were required to report which tribe(s) children are associated with.

13
14 12. Third, some counties and states severely understate the number of Cherokee children in
15 their child welfare systems. For example, in 2019, one Arkansas county stated it had 5 Cherokee
16 children, even though the tribal social service worker had personally worked on at least double that
17 number of cases.

18 13. Fourth, some state agencies send unnecessary notices to Cherokee Nation about children
19 within their system, instead of properly conducting the specific inquiries that ICWA requires the
20 agencies themselves to conduct. Before the Nation can provide its services in those cases, it must
21 spend a significant amount of time determining whether or not a child is actually eligible for tribal
22 membership. For example, in 2019, California sent nearly 3,000 notices to Cherokee Nation about
23 children who were not in fact Cherokee children, many of which would have been unnecessary if
24 California had made the inquiries required under ICWA. These notices require Cherokee Nation to
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27
28 ¹ ICWA requires child welfare agencies to prioritize placing children with their extended family or
within the tribal community.

1 perform a substantial amount of work to determine whether Cherokee children are involved.
2 Because of the frequency of over-notification, we need to devote five full-time staff to processing
3 ICWA notifications. We estimate that they spend more than 4,000 hours a year working on the
4 notices sent due to this over-identification, impeding the identification of actual Cherokee children
5 and consequently delaying the benefits to which they are entitled under ICWA.
6

7 14. Fifth, the states' failures to make inquiries and send notices required by ICWA
8 significantly increase the number of cases that require appeals, which consume significant resources
9 from my staff. In California, for example, 92% of ICWA appeals involved notice or inquiry errors,
10 many of which would have been unnecessary if California was required to collect data showing it
11 was completing the requisite notice and inquiry processes.
12

13 15. Sixth, Cherokee Nation's internal data only includes Cherokee Nation children, even
14 though Cherokee Nation has exclusive jurisdiction over any Indian child on its reservation under
15 ICWA, whether or not the child is a tribal citizen of that tribe. Without federal data of the children
16 by tribe, the Nation has no way to estimate the total number of child welfare cases it may be
17 responsible for, which also means the Nation has no way to estimate the number of child welfare
18 workers, attorneys, and judges it needs to hire to cover these cases.
19

20 16. This issue has become more acute in the last year following the United States Supreme
21 Court's decision in *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020). In that case, the Court upheld
22 certain aspects of an 1866 treaty that recognized the reservation of the Creek Nation. That decision
23 was expanded to the Cherokee Nation Reservation in *Hogner v. State*, a follow up state court
24 decision. No. F-2018-138, 2021 WL 958412 (Okla. Crim. App. Mar. 11, 2021). As a result of that
25 decision, under ICWA, the Cherokee Nation has exclusive jurisdiction over its own reservation,
26 including portions that the State of Oklahoma has previously treated as within its jurisdiction.
27 Accordingly, Cherokee Nation now has jurisdiction over unknown numbers of Indian children who
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1 live within the reservation boundaries. The Nation estimates this could be in the thousands of
2 children.

3 17. The 2016 Final Rule would have addressed these issues in several ways.

4 18. First, by requiring state child welfare agencies to report data on each of their inquiry
5 efforts under ICWA, the 2016 Final Rule would have ensured that state agencies are actually making
6 the full set of inquiries in the first place. Under current practices, there typically is no mechanism to
7 check whether agencies are making these inquiries on a regular basis.
8

9 19. Second, if Cherokee Nation had access to data on the state agencies' implementation of
10 those inquiry requirements, the Nation could work with states through its CAPS program to improve
11 their identification processes and limit errors. Having comprehensive ICWA data by state would
12 allow us to focus our assistance on the most prevalent implementation issues when working with
13 state agencies, simultaneously reducing the resources needed for such interventions and increasing
14 their efficacy.
15

16 20. Third, if there was adequate data indicating the true number of Indian children in a state,
17 the Cherokee Nation believes we could enter into tribal-state agreements more easily, and ensure a
18 proper allocation of resources across the country.

19 21. Fourth, the 2016 Final Rule would provide us comprehensive ICWA data broken down
20 by tribe, which would allow the Nation to determine the level of disproportionality of Cherokee
21 children in the system. This would in turn allow us to better allocate our resources and improve our
22 services in the areas where our children are most in need.
23


24 22. The 2020 Final Rule eliminated all of these benefits of the 2016 Final Rule, reimposing
25 the impediments that the 2016 Final Rule would have lifted. It will perpetuate the under-
26 identification of Cherokee children and the unnecessary notice about children who are not Cherokee;
27 prevent CAPS workers from identifying recurring ICWA implementation issues and working with
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1 state title IV-E agencies to fix those problems; render Cherokee Nation's CAPS services less
2 effective and more time-consuming than they otherwise would be; divert resources away from
3 Cherokee Nation's other activities; and prevent us from appropriately allocating resources and
4 services to aid our children around the country.

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6 23. I declare under penalty of perjury under the laws of the United States that the foregoing
7 is true and correct to the best of my knowledge.

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9 Dated: May 14, 2021

Respectfully submitted,



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11 Lou Stretch
12 Director Indian Child Welfare, Cherokee Nation
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