Case No. S243352

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

EFRIM RENTERIA and TALISHA RENTERIA, Petitioners, v. THE SUPERIOR COURT FOR THE COUNTY OF TULARE, Respondent.	Case No. S243352
REGINA CUELLAR and SHINGLE SPRINGS BAND OF MIWOK INDIANS aka SHINGLE SPRINGS RANCHERIA, Real Parties-In-Interest.	

On Appeal From the Tulare Superior Court Case No. VPR-047731
Honorable Nathan Ide, Judge

After Summary Disposition By the Fifth District Court of Appeal
Case No. F07533

SHINGLE SPRINGS BAND OF MIWOK INDIANS' ANSWER TO PETITION FOR REVIEW AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

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TO THE HONORABLE CHIEF JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF CALIFORNIA:

Pursuant to Rule 8.500(a)(2), California Rules of Court, Real Party in Interest SHINGLE SPRINGS BAND OF MIWOK INDIANS aka SHINGLE SPRINGS RANCHERIA hereby answers Petitioners EFRIM RENTERIA and TALISHA RENTERIA's Petition for Review of the unpublished and summary denial by the Fifth District Court of Appeal of their Writ for Extraordinary Relief.

VERIFICATION

Efrim Renteria et al. v. The Superior Court for the County of Tulare (*Regina Cuellar et al.*)
Verification of Pleading (Code Civ. Proc. § 446); Declaration under Penalty of Perjury Form (Code Civ. Proc. §§ 446, 2015.5);

I, JOSEPH J. WISEMAN, declare: I am legal counsel for the SHINGLE SPRINGS BAND OF MIWOK INDIANS aka SHINGLE SPRINGS RANCHERIA, Real Party-In-Interest in the above-entitled matter.

I have read the foregoing Answer and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and, as to those matters, I believe it to be true.

Executed on August 10, 2017, at Davis, California.

I declare under penalty of perjury that the foregoing is true and correct.

"s/" Joseph J. Wiseman
JOSEPH J. WISEMAN

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This case concerns the ruling by the Superior Court of Tulare applying the Indian Child Welfare Act ("ICWA") to a case involving the guardianship and custody of three minor children who are tribal members of the SHINGLE SPRINGS BAND OF MIWOK INDIANS aka SHINGLE SPRINGS RANCHERIA ("Shingle Springs Tribe" or the "Tribe"), Real Parties-in-Interest to this action. The Shingle Springs Tribe hereby answers the petition for review pursuant to California Rules of Court, Rule § 8.500.

First, this case is not procedurally ready for the California Supreme Court to review. To allow a petition for review at this stage would unnecessarily bypass the normal appellate review procedure, and prevent a fully developed record below. The Fifth District Appellate Court did not err by denying the writ of mandate, since Petitioners did not meet the standards for extraordinary writ relief. Petitioners sought a writ of mandate, as opposed to waiting for direct appellate review, because they argued that to proceed through the normal Superior Court processes would waste time and money. This was an insufficient reason for a writ to issue, and the Fifth District Appellate Court correctly denied review. No extraordinary relief is merited at this stage, and a fully developed record would be beneficial to all parties.

Second, this is not a case where it is necessary to secure uniformity of decision or to settle an important question of law under the California Rules of

Court. Rule § 8.500(b)(1). The Superior Court properly applied the ICWA to this case, a case so factually unique that both parties had difficulty finding applicable case law. Nevertheless, the lower court correctly held that the proceedings involving the guardianship of the three tribal member minors is a "child custody proceeding" under the ICWA and California's Senate Bill 678. The Indian family remained intact until the parents' untimely death, and the children's connection to the Tribe, and the Tribe's connection to the children, remains intact.

Finally, the Petition for Review incorrectly argues that this case is an equal protection case that hinges on whether the ICWA should apply solely because the minors are "genetically classified" as Indian children. This is factually untrue. Here, the Indian father, who was fully present in the children's lives, and retained all parental rights to them, was enrolled in the tribe and had the minor children enrolled as well. Consequently, there is no support for the argument that the minor children lack a significant relationship with the Tribe. And this is not a case that raises equal protection concerns under the existing family doctrine. Simply stated, the tribal member minors and the Tribe have a right to the procedures and protections of the ICWA.

II. STATEMENT OF FACTS

The minors' mother and father were killed in a car crash on December 17, 2015. The father was a member of the Shingle Springs Tribe, a federally-recognized sovereign Indian tribe. The three minors are also tribal members.

Before the crash, the three tribal member minors were domiciled with their parents in Visalia, California, and not on tribal land.

The Shingle Springs Tribe's Tribal Court first took jurisdiction of the case in January 2016, granting temporary custody to members of the children's paternal family. The case proceeded in Tribal Court, with the Honorable Judge Christine Williams presiding. On June 3, 2016, the Tribal Court issued an order appointing tribal member and paternal grand-aunt REGINA CUELLAR ("Cuellar"), Real Party-In-Interest, the guardian of the three tribal member minors. The Tribal Court found that Petitioners' allegations of abuse by a third party were inconclusive, and that additional investigation into the allegations was unfounded.

By June 12, 2016, Petitioners failed to comply with the Tribal Court's order and retained custody of the three minors. Thereafter, Petitioners filed a petition in family law Court in Tulare County on July 11, 2016 (Case FL 26606).

Petitioners also filed a Complaint in the United States District Court in Sacramento on July 21, 2016 (2:16-cv-1685 MCE). The District Court issued a preliminary injunction against Cuellar from enforcing the Tribal Court's June 3, 2016 order granting her guardianship, but declined to exercise jurisdiction over the Tribe itself.

Then on September 9, 2016, Petitioners filed an Application for Appointment of Guardianship in the Tulare County Superior Court.

/ / / / /

The parties ultimately agreed to dismiss the pending federal and Tribal Court case and proceed exclusively in the Tulare County Superior Court.

On January 17, 2017, the Tulare County Superior Court heard arguments on the application of the ICWA to the facts of the case. The Superior Court found in a written order that the instant matter was a "child custody proceeding" under the ICWA, and that the ICWA's procedures and protections applied to this case. The Superior Court relied upon the definitions under the ICWA (25 U.S.C. § 1903), as well as the parallel California protections enacted under Senate Bill 678 (2005–2006 Reg. Sess.).

The Petitioners then filed a Petition for Writ of Mandamus in the Fifth District Court of Appeals on March 28, 2017. In arguing that they were entitled to extraordinary relief, as opposed to waiting for a direct appeal, they simply argued that proceeding through normal proceedings at the Superior Court level would cost them time and money. The Fifth District Court of Appeals summarily denied the petition on July 14, 2017.

Petitioners then filed this Petition for Review on July 24, 2017, within the 10-day deadline. California Rules of Court, Rule § 8.500(e)(1).

III. ARGUMENT

A. This Case Should Proceed Through Direct Appellate Review.

The Fifth District Court of Appeal did not commit reversible error by denying the writ of mandate, since Petitioners did not meet the standards for extraordinary writ relief. Petitioners sought a writ of mandate, as opposed to

waiting for direct appellate review, because they argued that to proceed through the normal Superior Court processes would waste time and money. This was an insufficient reason for a writ to issue, and the Fifth District Appellate Court correctly denied review. To allow a petition for review at this stage would be to unnecessarily bypass the normal appellate review procedure.

Appellate courts generally grant writ relief only when the petitioner (1) has no other plain, speedy and adequate remedy in the ordinary course of law, and (2) extraordinary circumstances exist, including that the petitioner will suffer irreparable prejudice if such relief is not granted. Code Civ. Pro. § 1086; *Omaha Indem. Co. v. Superior Court (Greinke*) (1989) 209 Cal.App.3d 1271 (explaining in depth that writ review is generally disfavored since it leads to piecemeal resolutions, delays the appellate court system, and undermines the trial court).

In this case, the Court of Appeal correctly denied the petition for extraordinary relief since Petitioners have a remedy through a post-trial direct appeal, and they failed to show extraordinary circumstances such that writ relief was appropriate. An appeal is generally presumed to be an adequate remedy in the ordinary course of law, and nothing prevents Petitioners from appealing the Superior Court's decision when the case concludes. *See Curry v. Superior Court* (1993) 20 Cal.App.4th 180, 183. Moreover, "[a] remedy is not inadequate merely because more time would be consumed by pursuing it through the ordinary course of law than would be required in the use of an extraordinary writ." *Baeza v. Superior Court* (2011) 201 Cal.App.4th 1214, 1221. Petitioners failed to point

to any harm other than the fact that they must proceed through normal proceedings at the Superior Court level, and that this will cost them time and money.

This case should not be resolved by shortcuts around the normal review process. This is the type of case referenced in *Omaha Indem. Co., supra,* where the Court of Appeal would be in a far better position to review the question by direct appeal with a more complete record, more time for deliberation and, consequently, more insight into the significance of the issues. *Omaha Indem. Co. v. Superior Court, supra,* 209 Cal.App.3d at 1273. Similarly, this Court would also be in a better position to review the case after a full direct appeal, and a reasoned opinion by an appellate court.

B. There Is No Necessity To Secure Uniformity Of Decision Or To Settle An Important Question Of Law, Since the Superior Court Correctly Applied Well Established Rules Regarding The ICWA To The Facts of This Case

The California Rules of Court require a case to have a certain degree of legal importance in order for this Court to grant a petition for review. A party seeking such relief must show that there is a necessity to secure uniformity of decision or to settle an important question of law. California Rules of Court, Rule § 8.500(b)(1).

While undoubtedly of greatest important to the parties, the present case solely concerns the applicability of the ICWA to a discrete, albeit unique, set of facts. This is not a case where the application of these facts will impact a large number of litigants in this state, for the simultaneous death of two parents is,

fortunately, a rare event, and there is not any dispute between the California Courts of Appeal on this issue.

The Indian Child Welfare Act was intended as a federal mandate to those involved in the child custody system to work collaboratively with tribes to prevent the breakup of Indian families and tribes and to redress past wrongs of the American child custody system. *In re Kahlen W.* (1991) 233 Cal.App.3d 1414, 1421. In passing the legislation, Congress found "that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and Institutions." 25 USC §1901(4).

In 2006, to increase compliance with the ICWA, the California Legislature passed Senate Bill No. 678, codifying and elaborating on the ICWA's requirements through revisions to provisions of the Family, Probate and Welfare and Institutions Codes. *In re Michael V.* (2016) 3 Cal.App.5th 22, 232 fn. 4. These well-established rules were correctly applied to the unique facts of this case.

1. An Application for Guardianship Is A "Child Custody Proceeding" Under The ICWA and SB 678.

In this case, Petitioners filed an Application for Appointment of Guardianship in the instant action in the Tulare County Superior Court on September 9, 2016, and contend the ICWA does not apply to the proceeding.

Yet, courts have broadly interpreted the requirements of the ICWA in order to fulfill its purposes. *See, e.g.*, *In re Antoinette S.* (2002) 104 Cal.App.4th 1401, 1407 (better for a court to err on the side of giving notice under the ICWA); *Dwayne P. v Superior Court* (2002) 103 Cal.App.4th 247, 256–257 (same). The ICWA applies to broadly to child custody proceedings when an Indian child is involved. These proceedings "*include*":

> (i) "foster care placement" which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or **the home of a guardian** or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;
>
> (ii) "termination of parental rights" which shall mean any action resulting in the termination of the parent-child relationship;
>
> (iii) "preadoptive placement" which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and
>
> (iv) "adoptive placement" which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

25 USC §1903(1).

From the word "include," it is clear that the ICWA is intended to broadly apply to proceedings where the continued custody of an Indian child is at issue.

Indeed, the federal regulations regarding the ICWA make it clear that child custody proceedings includes "any proceeding" which "may culminate" in foster-care placement, a **preadoptive placement**, an adoptive placement, or a termination of parental rights. 25 CFR § 23.2 (2016).

Significantly, California has decreed that the ICWA applies to guardianship proceedings. Senate Bill 678, which was passed to incorporate and expand the ICWA's applications and protections, explicitly applies the protections of the ICWA to guardianship proceedings.

Probate Code section 1459.5 states that the ICWA shall apply to "any case in which the petition is a petition for ***guardianship*** of the person and the proposed guardian is not the natural parent or Indian custodian of the proposed ward." Prob. Code, § 1459.5 (emphasis added); *see also Guardianship of D.W.* (2013) 221 Cal.App.4th 242 (not noting what had happened to the minor's parents, but applying ICWA in a guardianship matter under Probate Code § 1459.5 where a paternal grandmother and maternal aunt each vied for guardianship when the father had been a tribal member).

The Welfare and Institutions Code includes guardian proceedings within the state's definition of "child custody proceeding." The section states:

> "'Indian child custody proceeding' means a 'child custody proceeding' within the meaning of Section 1903 of the Indian Child Welfare Act, including a proceeding for temporary or ***long-term*** foster care or ***guardianship placement,*** termination of parental rights, preadoptive placement after termination of parental rights, or adoptive placement. 'Indian child custody proceeding' ***does not*** include a voluntary foster care or guardianship placement ***if the parent or Indian custodian retains the right to have the child returned upon demand.***"

Welf. & Inst. C § 224.1(d) (emphasis added). This section expressly *includes* guardianship placement, and *only* excludes it if the parent has the right to demand return of the child.

Similarly, the Family Code was amended to state that child custody proceedings include the ICWA's definition, and any "voluntary or involuntary proceeding that may result in an Indian child's temporary or long-term foster care or ***guardianship placement*** if the parent or Indian custodian cannot have the child returned upon demand, termination of parental rights, or adoptive placement." Family C., § 170(c) (emphasis added)).

Both federal and state law expressly provide that if a state or federal law provides a higher level of protection to the rights of the parent or Indian guardian of an Indian child, the higher standard shall prevail. *In re Alexandria P,* (2014) 228 Cal.App.4th 1322, 1339 (citing 25 U.S.C. § 1921; Welf. & Inst. Code, § 224(d)). California law is more protective of tribal interests because it applies the ICWA protections in a broader range of cases. *R.R. v. Superior Court* (2009) 180 Cal.App.4th 185, 186. Therefore, even if the statutory language of the ICWA did not apply to the unique circumstances of this case, the additional protections provided under state law would, which includes the application of the ICWA to guardianships.

The cases cited by Petitioners to rebut the clear import of the law are not dispositive. Two of the cases, *In re J.B.* (2009) 178 Cal.App.4th 751, and *In re M.R.* (2017) 7 Cal.App.5th 886, concern situations where the superior court had to award custody *between* the children's parents. These cases specifically held that the ICWA does not cover a proceeding in which a dependent child is removed from one parent and placed with the other. *In re J.B.*, *supra*,178 Cal.App.4th at

757; *In re M.R., supra,* 7 Cal.App.5th at 905. Similarly, Petitioners cite *In re Abbigail A.* (2016) 1 Cal.5th 83, 93, for the premise that the ICWA was not intended to be construed outside of its statutory definitions. This general premise is true, but the case turned on whether the ICWA should have been applied to children who not Indian children as defined in the ICWA, and did not pertain at all to the "four types [of cases] specified in the Act." See *Petition for Review,* p. 17. These holdings are inapplicable to the case at hand.

Instead, the policy behind the ICWA and Senate Bill 678 reaffirm its application to this case. According to the Senate Rules Committee, Senate Bill 678 "affirms the state's interest in protecting Indian children and the child's interest in having tribal membership and a connection to the tribal community." *In re Alexandria P.* (2014) 228 Cal.App.4th 1322, 1339. These statutes are meant to apply to exactly this situation, where children are being removed from an Indian home, and the court is faced with an option of Indian and non-Indian placements. The Tribe therefore has a right to asserts its interests and the children's interests in maintaining their connection to each other under the ICWA.

2. This Case Involves A "Breakup" Of An Indian Family Under The ICWA.

Petitioners argue that the ICWA only applies when the case involves the "breakup" of an Indian family, and that under *Adoptive Couple v. Baby Girl* (2013) 133 S. Ct. 2552, that is not present here. However, as noted by the Superior Court, this case is wholly distinguishable from *Adoptive Couple*.

In *Adoptive Child*, an Indian father had abandoned all rights to his child when the non-Indian mother was pregnant. The Supreme Court found that the parties could not invoke the ICWA after the only connection to the tribe—the father—had previously relinquished all rights and claims to the child. The Supreme Court also emphasized that the ICWA applies to the "removal" of the child from an Indian family, and concluded that there could be no removal of a child from an Indian parent that had relinquished his rights and never had custody of the child. *Id.*

These arguments simply do not factually apply to the present case. In the instant case, the Indian parent—and the minors' connection to the Tribe—never discontinued his rights or custody to the Indian children. And there was no renunciation or voluntary break of the children's connection, through their father, to the Tribe. There is no legal argument to support that the tragic accident severed either the Indian parent's rights to his children, the Tribe's connection to the children, nor the children's connection to the Tribe.

This proceeding does concern a "breakup" of an Indian family, something Petitioners concede. As noted in their Petition, the beginning of the breakup of the family originally occurred in December 2015 with the death of the minors' parents, and the question remains what to do with the children after the involuntary and tragic removal of the minors' parents.

Moreover, the policy behind the ICWA, as cited in *Adoptive Couple*, does not support Petitioners' argument that the ICWA does not apply to this case. The

ICWA was the product of rising concern over the consequences of abusive child welfare practices that resulted in the separation of large numbers of Indian children from their families and tribes through placement in non-Indian homes. *Id.* at 2557; *see also In re Alexandria P* (2014) 228 Cal.App.4th 1322, 1338; *Mississippi Band of Choctaw Indians v. Holyfield* (1989) 490 U.S. 30, 32. "Indian parents who are already part of an 'Indian family' are provided with access to 'remedial services and rehabilitative programs' under §1912(d) so that their 'custody' might be 'continued' in a way that avoids" placement outside of the Indian family. *Adoptive Couple*, *supra*, 133 S. Ct. at 2563.

When the Indian parent relinquishes his connection to the child, as in *Adoptive Couple*, the Supreme Court found there is no concern about the state acting to discontinue a connection between the child and the tribe. In this case, unlike *Adoptive Couple*, there was continued Indian custody and there was an Indian family entitled to the services and protection under the ICWA. Because of this connection between the minor tribal members and the Tribe, the ICWA applies to this case.

3. The Application Of The ICWA Is Constitutional Where The Children Had A Significant Relationship With The Tribe.

The court below did not rule on the constitutional issues now raised by the Petitioners. However, the application of the ICWA in this case is not a violation of Petitioners' or the minor children's Equal Protection rights.

First, the Petitioners do not have the standing to raise this issue. They do

not represent the minor children in this action. And they themselves have no Equal Protection argument. De facto parents, such as foster parents, do not have standing to raise Constitutional arguments about the application of the ICWA, as they do not have a constitutionally protected interest in a continued relationship with the children. *In re Alexandria P* (2014) 228 Cal.App.4th 1322, 1341. Petitioners in this case have not been granted de facto parent status. Even if they had, this would not suffice to provide them with an interest in the case that is constitutionally protected. Since the Petitioners in this case do not have a constitutionally protected interest, they do not have the standing to raise this argument.

Next, Petitioners base their argument on the premise that the children's connection to the Tribe is "solely" genetic. *Petition for Review*, p. 18. Not only is this a gross misrepresentation of the facts, but it also is irrelevant to current law.

Despite the fact that the ICWA's application is dependent upon tribal membership or eligibility for membership, some early court cases suggested that the ICWA is a race-based statute and therefore applied the Equal Protection Clause. These cases all agree that that preserving Native American culture is a significant, if not compelling, governmental interest. *In re Bridget R.* (1996) 41 Cal.App.4th 1483; *In re Santos Y.*, (2001) 92 Cal.App.4th 1274. Nevertheless, even under these cases, a violation of equal protection by application of ICWA has only been found where **neither the child nor either parent maintains any significant social, cultural or political relationships with Indian life**. *In re Bridget R., supra*, 41 Cal.App.4th 1483.

This analysis is sometimes called the "existing family" doctrine (or the "existing Indian family" or "EIF" exception). This doctrine is controversial because it puts a state court judge in a position of deciding who is "Indian enough" to have the protections of the ICWA, a decision that Congress never gave to the judicial branch. *See Bench Handbook, Indian Child Welfare Act*, p. 6 (2013). Congress vested authority to determine who is an Indian child under the Act with the tribes, and the doctrine undermines the remedial purposes of the Act in addressing past government policies intended to assimilate Indian people. *Id.*

This doctrine had led to a split of authority in the appellate courts; notably with the most recent cases refusing to apply the doctrine. *In re Alexandria P* (2014) 228 Cal.App.4th 1322, 1343; *In re Autumn K.* (2013) 221 Cal.App.4th 674, 716 (noting that the language behind Senate Bill 678 did not support application of the doctrine); *In re Vincent M.* (2007) 150 Cal.App.4th 1247, 1265; *Adoption of Hannah S*. (2006) 142 Cal.App.4th 988, 996 (rejecting the doctrine and noting that to the extent that the equal protection analysis is different, the policies behind the ICWA readily meet the rational basis test); *In re Alicia S.* (1998) 65 Cal.App.4th 79, 83-92; *Adoption of Lindsay C.* (1991) 229 Cal.App.3d 404, 409-16.

However, any split was resolved when the federal regulations flatly rejected the existing family doctrine in 2016. The final rule removed the reference to the doctrine by name, and made clear that the inquiry into whether the ICWA applies to a case turns solely on whether the child is an "Indian child."

In the preamble to the final rule, not only was it noted that the ICWA did not contain any provision for a court to consider an Indian child's or parent's social, cultural, or geographic ties to the tribe, Congress also expressly recognized that State courts and agencies often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families. *Federal Register,* Vol. 81, No. 114 (Tuesday, June 14, 2016) (citing 25 U.S.C. 1901(5)). It was noted that the court that first created the existing Indian family exception has since rescinded it. *Id.* (citing *In re S.M.H*. (Kan. Ct. App. 2005) 103 P.3d 976). Only a handful of courts continued to recognize the exception, but "[t]hose courts that have rejected the EIF exception are correct." *Id.* (citing *In re Alexandria Y*. (1996) 53 Cal. Rptr. 2d 679). When Congress passed the ICWA, it was specifically concerned with children whose families lived far from Indian country, and might only maintain sporadic contact with the tribe. *Id.*

The new regulations expressly provide:

> In determining whether ICWA applies to a proceeding, the State court may not consider factors such as the participation of the parents or the Indian child in Tribal cultural, social, religious, or political activities, the relationship between the Indian child and his or her parents, whether the parent ever had custody of the child, or the Indian child's blood quantum.

25 CFR § 23.103(c). There is no longer any question as to whether this doctrine can be considered good law.

Even if the existing family doctrine was still good law, however, the instant case is not one where the minor tribal members' only connection is purely through biology. Petitioners again evoke *Adoptive Couple*, which did not reach the issue. *Petition for Review,* p. 21 ("The Supreme Court stated in dicta that if a child's only connection with the tribe is an ancestor, this *may* raise equal protection concerns"). As noted above, in *Adoptive Couple*, the tribe's only connection to the child was a father who had renounced all rights to the child before the child's birth, and who never had custody of the child. Similarly, in *In re Santos Y.,* (2001) 92 Cal.App.4th 1278, the equal protection concern was raised where the child was removed from his parents at birth.

In this case, however, the Indian father was fully present, retained all rights to his children, maintained custody of his children, and even had the minor children enrolled in the Tribe. The children also have a relationship with paternal grand-aunt Regina Cuellar, Real Party-In-Interest, who sis an elected official of the Tribe. Consequently, no serious argument can be made that the minor children lack a significant relationship with the Tribe. Therefore, this is not a situation where the equal protection concerns under the existing family doctrine are raised. Petitioner's assertion that this is a good case for the issue, because it is "uncontested" that the children's only connection to the Tribe is genetic, is purely and simply untrue.

Finally, Petitioners appear to argue that the ICWA is unconstitutional because it places extra burdens on Indian children, the courts, and the parties.

There can be no doubt that the ICWA places an extra burden on courts and the parties. But these burdens were carefully weighed by both Congress and the California Legislature as necessary and constitutional means to remedy an epidemic of the removal of Indian children from their tribes. *Mississippi Band of Choctaw Indians v. Holyfield* (1989) 490 U.S. 30, 32 (what one witness called "[t]he wholesale removal of Indian children from their homes, . . . the most tragic aspect of Indian life today.")

> Congress determined that Indian children who are placed for adoption into non-Indian homes frequently encounter problems in adjusting to cultural environments much different than their own. Such problems include being stereotyped into social and cultural identities which they know little about, and a corresponding lack of acceptance into non-Indian society. Due in large part to states' failures to recognize the different cultural standards of Indian tribes and the tribal relations of Indian people, Congress concluded that the Indian child welfare crisis was of massive proportions and that Indian families face vastly greater risks of involuntary separation than are typical for our society as a whole. These involuntary separations created social chaos within tribal communities. The emotional problems embedded in Indian children hampered their ability as adults to positively contribute to tribal communities, and left families in extended mourning mode, significantly impairing their ability to meet their tribal citizenship responsibilities.

Bench Handbook, Indian Child Welfare Act, p. 9 (2013) (citations removed).

Although progress has been made as a result of the ICWA, the National Indian Child Welfare Association states out-of-home placement still occurs more frequently for Native children than it does for the general population, and in fact, tribal families are four times more likely to have their children removed and placed in foster care than their white counterparts. NICWA, "About ICWA,"

(2017), available online at: https://www.nicwa.org/about-icwa/. Before California passed SB 678 just ten years ago, the Senate noted the continuing need for these protections: "Indian children continue to be adopted outside of their tribal communities against the wishes of their tribes." Senate Judiciary Committee, SB 678, Bill Analysis (August 22, 2005), available online at: ftp://www.leginfo.ca.gov/pub/05-06/bill/sen/sb_0651-0700/sb_678_cfa_20050824_124654_sen_comm.html. Accordingly, Senate Bill 678 was passed "to alleviate confusion and ensure that the Act's objective, 'to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families' is met." *Id.*

Although the ICWA places extra burdens on the courts and the parties, these extra steps are a necessary and constitutional way to maintain tribes' quasi-sovereign national status, and to maintain their social, political, cultural, and religious sovereignty, by preventing assimilation of their children into non-Indian homes. The ICWA thus reflects the congressional determination it is "in the best interests of Indian children to retain tribal ties and cultural heritage and in the interest of the tribe to preserve its future generations." *In re Breanna S.* (2017) 8 Cal.App.5th 636, 649 n.4.

To complement this goal, SB 678 contains express legislative findings that "it is in the interest of an Indian child that the child's membership in the child's Indian tribe and connection to the tribal community be encouraged and protected, regardless of whether the child is in the physical custody of an Indian parent or

Indian custodian at the commencement of a child custody proceeding…" Welf. & Inst. C., § 224(a)(2).

These are not new concepts. The Superior Court correctly applied these concepts, as well as clear state and federal law, to apply the ICWA's requirements to the unique facts of this case. Because of this, there is no necessity for this Court to take this case at this time to secure uniformity of decision or to settle an important question of law.

IV. CONCLUSION

The Petition should not be granted in this case. This case is not yet ready for Supreme Court review, since the Petitioners were summarily denied a petition for writ of mandate and are attempting to bypass the direct appeal procedure. The Petitioners did not point to any harm, other than time and expense, that will occur by having to wait for the Superior Court process to proceed. This case would benefit from having a full record and a full direct appeal before submitting the case to the Supreme Court.

Second, Petitioners have not shown that this is a case where the Supreme Court's review is necessary for uniformity of decision or to settle an important question of law under California Rules of Court, Rule § 8.500(b)(1). Petitioners' arguments that the ICWA does not apply is not based on any case that is similar to the facts of this case. Moreover, there is no split on the existing family doctrine since the federal regulations of 2016. Finally, any cases that could be applied to argue that the ICWA is unconstitutional rely on cases markedly different from the

facts raised on this case, where there is no or a minimal connection between the minor children and the tribe. In this case, on the other hand, there has been a historical connection between the minor tribal members and the Tribe. The policies behind the ICWA shows that the proceedings and protections of the ICWA were correctly applied in this case.

Dated: August 10, 2017

Respectfully submitted,

By: "/s//" Joseph J. Wiseman_____

JOSEPH J. WISEMAN
Attorney for Real Party-In-Interest
SHINGLE SPRINGS BAND OF
MIWOK INDIANS aka SHINGLE
SPRINGS RANCHERIA

CERTIFICATION OF COMPLIANCE

Pursuant to Rules 8.504 and 8.204(c) of the California Rules of Court, the Answer to Writ of Review, and/or Other Appropriate Relief; Memorandum of Points and Authorities In Support Thereof; filed on behalf of the SHINGLE SPRINGS BAND OF MIWOK INDIANS aka SHINGLE SPRINGS RANCHERIA, contains 6,564 words.

Dated: August 10, 2017

Respectfully submitted,

By: "s/" Joseph J. Wiseman _____

JOSEPH J. WISEMAN
Attorney for Real Party-In-Interest
SHINGLE SPRINGS BAND OF
MIWOK INDIANS aka SHINGLE
SPRINGS RANCHERIA

PROOF OF SERVICE BY MAIL

CCP §§ 1013a, 2015.5

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Sacramento, State of California. My business address is 431 I Street, Suite 201, Sacramento, California 95814.

On August 10, 2017, I served true copies of the following document(s) described as:

SHINGLE SPRINGS BAND OF MIWOK INDIANS' ANSWER TO PETITION FOR REVIEW; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL:

I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 10, 2017, at Sacramento, California.

By: "s/" Joseph J. Wiseman_____

JOSEPH J. WISEMAN

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EXHIBIT A

Fifth Appellate District Order

IN THE

COURT OF APPEAL OF THE STATE OF CALIFORNIA

IN AND FOR THE

FIFTH APPELLATE DISTRICT

EFRIM RENTERIA et al., Petitioner, v. THE SUPERIOR COURT OF TULARE COUNTY, Respondent; REGINA CUELLAR et al., Real Parties in Interest.	F075331 (Tulare Super. Ct. No. VPR047731) **ORDER**

BY THE COURT:*

The "Petition for Writ of Mandate and/or Other Appropriate Relief …," filed on March 23, 2017, is denied.

Hill, P.J.

* Before Hill, P.J., Poochigian, J., and Smith, J.