UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Americans for Tribal Court Equality, James Nguyen, individually and on behalf of his minor child A.N., and Michelle Steinhoff, individually and on behalf of her minor child T.J.,

Plaintiffs,

v.

Emily Piper, in her official capacity as Commissioner of the Minnesota Department of Human Services, and Scott County,

Defendants.

Case No. _____

VERIFIED COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND OTHER RELIEF

JURY TRIAL DEMANDED

INTRODUCTION

The Plaintiffs Americans for Tribal Court Equality, James Nguyen and Michelle Steinhoff, individually and on behalf of their respective children A.N. and T.J., seek prospective declaratory, injunctive, and other relief against the Defendants Commissioner of the Department of Human Services Emily Piper and Scott County.

The Minnesota Department of Human Services' and County's written policy and custom violate federal law by transferring non-reservation Indian minor children child custody proceedings (inclusive of child-welfare and child-protection proceedings) to tribes without first initiating a state court proceeding and without first obtaining, in that state court proceeding, the non-member parent's consent to the tribal-court transfer.

The Indian Child Welfare Act, 25 U.S.C. § 1911(a), statutorily preempts the Minnesota Department of Human Services' and Scott County's written policy and custom of automatically transferring all child custody proceedings involving Indian minor children to tribal communities in Minnesota before initiating a state court proceeding and before, in that state court proceeding, obtaining the required consent of the non-member parent to the tribal-court transfer.

Parental rights of fit parents are constitutionally-protected. The U.S. Supreme Court in *Troxel v. Granville*, 530 U.S. 57, 65 (2000) determined that Washington's visitation statute which targeted rights of "fit parents" violated the constitutional presumption of fit parents making decisions in the best interests of their children:

> [S]o long as a parent adequately cares for his or her children (*i.e.*, is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children.

Troxel v. Granville, 530 U.S. 57, 69 (U.S. 2000). Nguyen, Steinhoff and other members of Americans for Tribal Court Equality are non-tribal-member parents of different Indian minor children subject to the federal Indian Child ICWA. Both Nguyen and Steinhoff are "fit parents" because no court or agency has ever found them not to be "fit" criminally, civilly, administratively or otherwise. But, the respective tribal-member parents of A.N. and T.J., have, at times, been unfit to parent A.N. and T.J.

The state's and county's policy and custom result in non-member parents being discriminated against and retaliated against by the tribe to which the state and county refer the child custody matter to. Consequently, non-member parents are understandably fearful to report child abuse, endangerment or neglect by a tribal member to county officials

because Minnesota's policy, adhered to by all counties, is to immediately transfer the child protection matter to tribal officials. The state policy even applies when the child does not reside within the tribe's reservation.

Tribes, for their part, disregard the need to ensure that the child custody proceedings are first commenced in state court, and not be transferred to tribal court until the non-member parent consents in the state court proceeding.

Because the ICWA requires the consent of both parents before the transfer of a child-protection matter to a tribal tribunal, the federal statute preserves the parental rights of the non-member parent to make the final decision of jurisdiction which will ultimately determine the child's future welfare. If that parental right is superseded by the state's policy to automatically invoke the jurisdiction of a tribe, the policy not only violates the ICWA, but violates the constitutionally protected rights of the non-member parent who retains under the Act the last vestige of decision-making in the best interests of the child.

This is of particular importance where both parents have lived exclusively off the reservation with their respective children. Living off the reservation, the non-member parent's expectation based on the ICWA would be a state court proceeding requiring the non-member parent's consent before the tribal-court transfer. The ICWA requires such a state court proceeding prior to the tribal-court transfer. Under the ICWA, a parent is entitled to a state court proceeding, notice, and an opportunity to object before the state or county transfers the child custody proceeding to the tribe.

The Minnesota's Department of Human Services Indian Child Welfare Manual[1] violates the federal ICWA by requiring transfer of child custody matters to tribal jurisdiction without a state court proceeding and without obtaining, in that state court proceeding, the non-member parent's consent: Under the Department's written policy, Scott County violates the federal ICWA by transferring child custody and child welfare matters concerning minor children residing off the reservation and on Public Law 280 tribe reservations without first commencing a state court proceeding and without, in that state court proceeding, first obtaining *both parents'* consent.

In so doing, the Department's and County's written policy and custom unconstitutionally assume that a non-member parent would consent in state court to tribal-court transfer, which is a substantive violation of the Due Process Clause under *Troxel.* The Department's and County's written policy and custom also fail to provide for federally-required state court due process for the non-member parent to exercise his or her federally-protected right to object to tribal-court transfer.

In this case, SMSC illegally obtained and illegally retains jurisdiction over the minor children involved through its child-protection processes. The non-member parents objected to SMSC tribal court jurisdiction. The County failed to assert and continues to fail to assert its exclusive jurisdiction over child custody and child welfare matters as contemplated by the ICWA. Instead, the County under the State's violative policy illegally deferred and illegally continues to defer to tribal jurisdiction.

[1] The DHS Indian Child Welfare Manual is currently available at "http://www.dhs.state.mn.us/main/groups/county_access/documents/pub/dhs16_157701.pdf".

The parent-child relationship is affected by the tribal courts not enforcing federal and state parental rights. Moreover, the SMSC administrative system favors the member parent over the non-member parent. In fact, the tribe has retaliated against a non-member parent with a "no trespass order" providing the specific basis that the non-member parent had obtained a state court Order for Protection against the member parent to protect the non-member parent and child. The prejudicial effect of the tribe's "no trespass order" has threatened parental relationships of non-member parents with their children and brings to light predictable abuses of tribal administrative processes.

Further, the Plaintiffs' fear of non-members being targeted in tribal child custody and child welfare processes is enhanced by the illegality of the Defendants' policy and custom. When non-member targeting occurs by the tribe, the Plaintiffs can not complain to the County because, under the Department's policy, the County is required to refer any child custody or child protection matter to the tribe. Any child custody or child protection complaint started in Scott County, under the Department's policy, would automatically be referred to SMSC. So, the non-member parent underreports child abuse and child neglect by the tribal-member parent to the County for fear of retaliation by the tribe.

Thus, the Department of Human Services' and County's policy and custom, in violating federal law, is not in the best interests of the child.

PARTIES

1. Plaintiffs.

1. Plaintiff James Nguyen is a citizen of Minnesota and resides in Hennepin County. He is Amanda Gustafson's husband and is the father of their minor child A.N. Mr.

Nguyen is not a member of the Shakopee Mdewakanton Sioux (Dakota) Community (SMSC). Mr. Nguyen is not an American Indian. Mr. Nguyen is a member of the Americans for Tribal Court Equality.

2. A.N. is Mr. Nguyen's and Amanda Gustafson's minor child. Ms. Gustafson and A.N. are SMSC members.

3. Plaintiff Michelle Steinhoff is a citizen of Minnesota and a resident of Dakota County. She is the mother of her minor child T.J. Ms. Steinhoff is not a member of the SMSC. Ms. Steinhoff is not an American Indian. Ms. Steinhoff is a member of the Americans for Tribal Court Equality.

4. Plaintiff Americans for Tribal Court Equality is an association of individuals that seeks to inform, advise and unify individuals who have or who have had a spouse or intimate partner who is a member of a tribal entity—such as the Shakopee Mdewakanton (Dakota) Sioux Community, the Prairie Island Sioux Community—regarding discriminatory practices towards non-members in family, child-custody, and child-protection proceedings. Some members of the association have experienced overt discriminatory practices as non-community members during marital dissolution disputes or other family-law proceedings. For example, retaliatory actions by SMSC have resulted in non-trespass orders when a non-member obtains a state court order for protection against the other spouse or partner. Non-members have experienced tribal court orders in favor of members granted without a reasonable opportunity for non-members to be heard. The association seeks to inform the tribal communities, their judiciaries, and people who associate with community members of the unequal treatment of non-members and of the harm of discriminatory practices.

Kimberly Watso, a party in a previously-filed lawsuit relating to the same subject matter, is also a member of the Americans for Tribal Court Equality.

2. Defendants.

5. Defendant Emily Piper is Commissioner of Minnesota's Department of Human Services ("DHS"). DHS is a Minnesota state agency.

6. As DHS's Commissioner, Ms. Piper is responsible for the promulgation and dissemination of Minnesota's Indian Child Welfare Manual.

7. The Indian Child Welfare Manual is disseminated to all 87 Minnesota counties and is applicable to "both county social service agencies and private child-placing agencies."

8. Defendant Scott County is a local government in Minnesota. The County has a department, Health and Human Services, through which Scott County Social Services operates as the County's public child welfare agency responsible for community concerns about child safety, child well-being, and family stability.

OTHERS

9. The SMSC is located in Scott County, Minnesota on approximately 2,000 acres of land. The SMSC population has a population of approximately 658 people according to the 2010 U.S. Census. Not all of the 658 people are community members.

JURISDICTION

10. This Court has subject matter jurisdiction over the claims asserted in this complaint under 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. § 2201 (declaratory judgment act), and 42 U.S.C. § 1983 (Civil Rights Act).

VENUE

11. Venue is proper under 28 U.S.C. § 1391(b) because all of the parties reside in Minnesota.

FACTS

1. James Nguyen.

12. Mr. Nguyen and Ms. Gustafson resided in Sherman Oaks, California until August 2014 when they moved to Minnesota.

13. In 2014, they married in Las Vegas, Nevada.

14. After moving to Minnesota, Mr. Nguyen and Ms. Gustafson resided in Ms. Gustafson's house in Prior Lake, Minnesota which is not within the SMSC reservation. Prior Lake is located in Scott County.

15. Mr. Nguyen was not a SMSC member. Ms. Gustafson was a SMSC member, but she did not reside within the SMSC property boundaries.

16. Unfortunately, Ms. Gustafson has been addicted to drugs and continues to use heroin. She continued to use drugs throughout her relationship with Mr. Nguyen, including their marriage. Ms. Gustafson also used drugs while she was pregnant with A.N. Upon information and belief, Ms. Gustafson continues to use drugs.

17. As a result of her drug use, Ms. Gustafson has been incarcerated. She has also been incarcerated for probation violations.

18. In 2014, Ms. Gustafson's use of illicit drugs during her pregnancy was reported to the Scott County Police Department and SMSC. Ms. Gustafson was charged and convicted of domestic assault and interfering with a 911 call. As a result of the reporting of

illicit drug use to SMSC, SMSC placed Ms. Gustafson under SMSC conservatorship in April 2014 due to her drug problem and by reason of mental illness. She entered into a drug rehabilitation program in California where both Mr. Nguyen and Ms. Gustafson had owned another home.

19. Upon conclusion of a paternity test, despite Ms. Gustafson's drug addiction, Mr. Nguyen married Ms. Gustafson in June 2014 in Las Vegas, Nevada.

20. Soon after their marriage, inexplicably, Ms. Gustafson attacked her husband, Mr. Nguyen. In June 2014, she was charged with battery against a spouse, but the California court dropped the case after she was charged with felony domestic assault on October 4, 2014.

21. Mr. Nguyen and Ms. Gustafson returned to their home in Prior Lake, Minnesota in August 2014.

22. In September 2014, A.N. was born in Minneapolis, Minnesota.

23. On September 30, 2014, the SMSC conservatorship of Ms. Gustafson previously commenced by SMSC in April 2014 was ended.

24. On October 4, 2014, Ms. Gustafson attacked Mr. Nguyen and was charged with felony domestic assault in Scott County and interference with a 911 call.

25. On October 6, 2014, Mr. Nguyen obtained from Scott County district court an order of protection for his child A.N. and himself.

26. The Scott County order for protection was against Ms. Gustafson to protect Mr. Nguyen and A.N.

27. After a three-day incarceration in Scott County prison, Ms. Gustafson temporarily moved in with her aunt who has a home within the SMSC property boundaries for about five months.

28. On October 9, 2014, Ms. Gustafson petitioned for divorce in SMSC Tribal Court after the order for protection was obtained.

29. On October 16, 2014, Mr. Nguyen petitioned for divorce in Scott County.

30. On November 5, 2014, the SMSC Business Council issued a no-trespass order against Mr. Nguyen, specifically stating it was due to the order for protection he obtained from Scott County district court against SMSC member Ms. Gustafson.

31. Mr. Nguyen did not receive any notice from SMSC stating the Business Council was considering the issuance of a no-trespass order against him.

32. Mr. Nguyen did not receive any notice for a hearing on the SMSC Business Council's consideration of issuing a no-trespass order against him.

33. The SMSC Business Council did not hold a hearing that Mr. Nguyen could attend to defend himself against the proposed issuance of a no-trespass order.

34. The SMSC Business Council issued the no-trespass order in retaliation for Mr. Nguyen obtaining a state court order for protection against an SMSC member, his wife, Amanda Gustafson, who physically assaulted Mr. Nguyen, who used illegal drugs, and used drugs during her pregnancy—all facts the SMSC Business Council knew at the time the Council issued the no-trespass order.

35. The SMSC no-trespass order against Mr. Nguyen remains in effect.

36. Meanwhile, Ms. Gustafson was jailed in Scott County on or about November 12, 2014. She was released on or about November 18, 2014.

37. Less than 8 days later, Ms. Gustafson, in retaliation for Mr. Nguyen's order for protection for himself and A.N., filed a complaint against Mr. Nguyen with the SMSC child protection services.

38. In response, SMSC opened a child welfare case.

39. SMSC did not report the complaint to Scott County.

40. At the time, A.N. did not reside and was not domiciled within the SMSC reservation.

41. Ms. Gustafson did stay for a short time at her aunt's residence on the SMSC reservation during part of the time the state court order for protection was in effect.

42. During this period, Ms. Gustafson did have parenting time and some overnights with A.N.; but, even during this period, A.N. was with Mr. Nguyen a majority of the time off the reservation.

43. 25 U.S.C. § 1911(a) states in part:

> An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe.

44. In March 2015, Mr. Nguyen and Ms. Gustafson reconciled.

45. Then, Mr. Nguyen and Ms. Gustafson purchased a home in Bloomington, Minnesota which became the residence for Ms. Gustafson, Mr. Nguyen, and A.N. The Bloomington, Minnesota home was not within the SMSC reservation.

46. On June 7, 2015, both Mr. Nguyen and Ms. Gustafson agreed to dismiss their respective divorce petitions and Mr. Nguyen agreed to dismiss the state court order for protection.

47. Ms. Gustafson dismissed her tribal court divorce proceeding on June 26, 2015; Mr. Nguyen dismissed his state court divorce proceeding on July 6, 2015.

48. On June 30, 2015, Mr. Nguyen, in compliance with his agreement with Ms. Gustafson, had the Scott County order for protection vacated.

49. On July 1, 2015, Mr. Nguyen and Ms. Gustafson sold their home in Prior Lake, Minnesota.

50. On July 30, 2015, the SMSC tribal court closed the SMSC child welfare. But, the Tribal Court order, without any finding that Mr. Nguyen was or is an unfit parent, gave him and Ms. Gustafson temporary legal and physical custody, and retained jurisdiction over the minor child A.N. as a "ward of the court."

51. Nothing in the record indicated that Mr. Nguyen had threatened or was a threat to his child. Nothing in the record indicated that he used drugs, that he refused to follow directions from the tribal court or SMSC protection services.

52. Meanwhile, Ms. Gustafson, as a SMSC member, used drugs during her pregnancy, continued to use illicit drugs, refused to go to treatment, and had shown no signs to cooperate in seeking treatment for her drug addiction, had been incarcerated and was subject to a criminal prosecution proceeding—all known to SMSC child protection services and the Tribal Court. In addition, the closing guardian ad litem and closing Child Welfare

Officer statements noted Ms. Gustafson refused to cooperate and yet there was no finding that Ms. Gustafson was an unfit parent.

53. The July 30, 2015 order exemplifies the unfairness of the SMSC's processes and procedures to non-members because the order curtails Mr. Nguyen's protected parental rights without a sufficient evidentiary basis. For instance:

- there is no finding by the court that Mr. Nguyen placed his child in any danger at any time to warrant the court's order retaining jurisdiction over A.N. as a "ward of the court";
- there is no finding that Mr. Nguyen is an unfit parent; and
- the July 30, 2015 tribal court order has kept A.N. a ward of the court—indefinitely— as there is no termination date provided in the order.

54. By the July 30, 2015 tribal court order which provided Mr. Nguyen "temporary" legal and physical custody of A.N. and retaining jurisdiction over A.N. as a ward of the court, the tribal court directly interfered with the child-parent relationship effectively curtailing, without notice or hearing, Mr. Nguyen's parental rights regarding:

- Decisions about medical or psychiatric examination and treatment of his child because as the order implies he must seek tribal court permission to make major medical decisions for his child;
- Decisions about education because the order implies he must seek tribal court permission;
- Decisions about leaving the state or country because the order implies that he must seek tribal court permission.

55. Beginning in October 2015, Ms. Gustafson was incarcerated.

56. In November 2015, SMSC reopened Ms. Gustafson's conservatorship (the first conservatorship having occurred when she was about 18 years old by reason of chronic drug abuse and mental illness). The petition identified her pending Scott County criminal matters and incarceration ultimately expressing concerns about her mental health, drug abuse and financial matters. As a result, the SMSC Tribal Court appointed guardians regarding "her person and estate."

57. While incarcerated, Ms. Gustafson tested positive for opiates.

58. In December 2015, Ms. Gustafson was sent to intensive inpatient treatment.

59. In January 2016, Ms. Gustafson was kicked out of the treatment program because of misbehavior and returned to prison.

60. In March 2016, while Ms. Gustafson was incarcerated, Mr. Nguyen purchased property in California.

61. Mr. Nguyen and Ms. Gustafson planned to reside and be domiciled in California, while having another home in Bloomington, Minnesota.

62. In August 2016, Ms. Gustafson is released from prison. A few days later, the tribal court closed the SMSC conservatorship.

63. In September 2016, Ms. Gustafson was again using heroin.

64. Ms. Gustafson was found using illicit drugs while caring for A.N.

65. Mr. Nguyen, in California at the time to attend a wedding, asked his mother to remove A.N. from Ms. Gustafson's control at their Bloomington, Minnesota home. His mother did as he asked and his aunt helped. Because his aunt is a teacher, she thought she was required under Minnesota law to report that Ms. Gustafson abused drugs around A.N.

So, Mr. Nguyen's aunt notified Hennepin County child-protection services and Humboldt County California child-protection services.

66. While Mr. Nguyen's mother and aunt attempted to remove A.N. from their Bloomington, Minnesota residence, Ms. Gustafson contacted an attorney who in turn threatened Mr. Nguyen's family members with kidnapping charges if they removed A.N. from the home.

67. Ms. Gustafson and A.N. flew to join Mr. Nguyen in California. Ms. Gustafson decided to return to Minnesota to face additional incarceration for parole violations.

68. Ms. Gustafson is incarcerated in February 2017.

69. After this short incarceration, Ms. Gustafson appeared to Mr. Nguyen to have stopped using drugs. Ms. Gustafson and Mr. Nguyen were back living together. But, in June 2017, Mr. Nguyen finds Ms. Gustafson using heroin again during a stay in Minnesota.

70. On his return to California, in June 2017, Mr. Nguyen filed for divorce in California and Ms. Gustafson was served with the divorce documents. Soon thereafter, because of Ms. Gustafson's drug addiction, Mr. Nguyen obtained a court order granting him full custody of A.N. The petition for temporary full custody noted Ms. Gustafson's recent arrest at the Twin Cities airport and drug use among other matters.

71. Ms. Gustafson threatened Mr. Nguyen by saying that she would have SMSC take A.N. away from him.

72. After obtaining the California court order for temporary full custody, Mr. Nguyen told SMSC officials about Ms. Gustafson's drug abuse, arrests, and related matters believing the conservatorship would be re-opened to protect him and A.N.

73. Instead, on July 24, 2017, Ms. Gustafson filed for divorce with the SMSC Tribal Court.

74. On August 7, 2017, because of an additional unsolicited email from Ms. Gustafson's divorce attorney dated August 4, 2017, without any notice or hearing as to the legal and factual issues presented to the court, the SMSC Tribal Court issued a written order, specifically noting that Ms. Gustafson had two conservatorship proceedings initiated by the SMSC, thus knowing of her drug addiction and incarceration, and without any mention or consideration of Mr. Nguyen or his parental rights, commanded A.N.'s return to Minnesota, asserted jurisdiction over the child, and continued the visitation of both parents.

75. Consequently, Mr. Nguyen's case in California was dismissed in favor of tribal jurisdiction.

76. Notably, the SMSC Tribal Court, since the commencement of Ms. Gustafson's SMSC divorce proceeding, has restricted Mr. Nguyen's ability to care for A.N. by limiting his visitation to SMSC boundaries and Scott County boundaries when Mr. Nguyen has a home in Bloomington which is in Hennepin County, Minnesota.

77. Under the tribal court order, Mr. Nguyen may not take A.N. out of Scott County, where he does not have a home, unlike Ms. Gustafson.

78. Moreover, the tribal court order prevents A.N. from enjoying family outings, family gatherings, family holidays, including celebrations of her birthday outside of Scott County.

79. Additionally, the tribal court order prevents Mr. Nguyen from bringing A.N. for religious services to his family church in Dakota County.

80. Mr. Nguyen does not believe that the SMSC provides a good environment for A.N. SMSC has a drug and alcohol culture as demonstrated by Ms. Gustafson's example.

81. It is one reason that he and Ms. Gustafson have not resided in SMSC.

82. For instance, Mr. Nguyen has read that because of the success of the SMSC Mystic Lake Casino and Resort and the millions in dollars in per capita payments to SMSC adult members, SMSC member children can look forward to wealthy lives without ever opening a textbook.

83. As for his child's future, Mr. Nguyen is also concerned about A.N.'s future if SMSC is involved. Regardless of other possible educational alternatives that may be available to his child, Mr. Nguyen is concerned about the SMSC general attitudes and culture toward educational achievement his child would be subject or otherwise exposed to. Mr. Nguyen is concerned about the low high school graduate rates at SMSC. Mr. Nguyen has read that SMSC's high school graduation rate is about 56%. For example, Ms. Gustafson was expelled from school at 7th grade for distribution of prescription drugs, to be home schooled only to never achieve a diploma nor have the desire to complete a GED program while in Shakopee Prison for women. Mr. Nguyen also read that other tribes offer substantial monetary incentives for academic milestones for their members. To his knowledge, SMSC does not do so resulting in dependence on SMSC per capita payments.

84. Similar concerns exist regarding other Indian communities or tribes as it relates to non-tribal members or non-Indian parents seeking to break from damaging cultural cycles regardless of and without blame to those communities or tribes.

85. Mr. Nguyen has a right, as a parent, to decide what is in the best interests of his child based upon opportunities that can be provided to the child and not solely based upon race, culture, religion, or nationality.

86. As a minority himself, Mr. Nguyen is well aware of the difficulties in any society to succeed and based upon his life experience and judgment, as a parent, he can appreciate the inequities of cultures; but, no one has determined, adjudicated, or otherwise found that he is an unfit parent.

87. Because no agency, department, or court has found that Mr. Nguyen is an unfit parent, he believes that as a parent, his judgment regarding the paramount concern of the welfare of his child must be taken into account and cannot be taken from him without notice and opportunity to be heard.

88. Other members of Americans for Tribal Court Equality have had similar experiences with the SMSC as non-members married to or having a relationship with SMSC members which resulted in having children.

2. Michelle Steinhoff.

89. Michelle Steinhoff did not reside and was not domiciled within the SMSC boundaries. Her child T.J. did not reside within the SMSC boundaries.

90. T.J.'s father, Mr. Daniel Jones, is an SMSC member. Mr. Jones did not reside on the SMSC reservation for periods of time.

91. Mr. Jones has a lengthy criminal history including many felonies and misdemeanors. Some of his convictions include felony child neglect and felony child endangerment.

92. Just before his imprisonment and shortly after T.J. was born, Mr. Jones started a custody and child support proceeding in SMSC Tribal Court to preempt an initial filing by Ms. Steinhoff in state court.

93. Ms. Steinhoff objected to the tribal court proceedings.

94. Nonetheless, the SMSC Tribal Court proceeding, while giving Ms. Steinhoff full physical custody, allowed joint legal custody and required reasonable visitation for Mr. Jones-without supervision-with their child. The SMSC Tribal Court also divested itself of jurisdiction for physical custody modifications which needed to be done in state district court.

95. After getting out of prison in 2008, Mr. Jones did not contact Ms. Steinhoff nor make any effort to see T.J.

96. Instead, after three months of being out of prison, Mr. Jones took Ms. Steinhoff back to SMSC tribal court to establish a parenting visitation schedule.

97. Initially, there were supervised visits for Mr. Jones; but, then the tribal court allowed unsupervised visits including picking up T.J. at his elementary school, while Mr. Jones legally was not to have any unsupervised visits with any minor children.

98. In August of 2013, an official from Scott County child protection services came to Ms. Steinhoff's home, she communicated to Ms. Steinhoff about Mr. Jones's crime and checked in with T.J. to see if he was safe. She also made Ms. Steinhoff aware that her findings would be reported to SMSC and it would be up to SMSC whether they wanted to open a tribal child welfare case. She also made Ms. Steinhoff aware that Mr. Jones was not

supposed to have any unsupervised contact with any minor children, including T.J., even though he had been.

99. Throughout his life, Mr. Jones rarely visited T.J. For instance, in 2013 and 2014, Mr. Jones visited T.J. a total of 4 or 5 times.

100. In 2014, Mr. Jones told Ms. Steinhoff that he wanted full custody of their child asserting that she had their child for the first 12 years of life and that he wanted the child's last 6 years.

101. Because Mr. Jones's unsupervised parenting visitation schedule remained in place by tribal court order, T.J. did visit Mr. Jones on occasion, but very rarely.

102. During once such visit, on June 27, 2014, Ms. Steinhoff received a call from SMSC child protection services. A SMSC official from child protection services explained to Ms. Steinhoff that SMSC would be taking physical and legal custody of her child and preventing her from calling her child or having any contact.

103. The SMSC official, only after the phone call, emailed her a copy of the petition and signed court order. The next hearing was set for two weeks. If the petition had been in state court, the hearing would have been in 3 days.

104. The child was placed by SMSC in Mr. Jones's custody.

105. Ms. Steinhoff contacted the Prior Lake police department to check on T.J.'s welfare. The police department responded that they could not because he was on the SMSC reservation.

106. No county child protection services were ever contacted by SMSC officials. No child protection complaint was ever filed with any county child protection services by any SMSC official.

107. Ms. Steinhoff contacted county child protection services. She asked (begged) the child protection officer to open a case in district court. The official said they wouldn't because they had no reason to do so because of the tribal court proceedings and they wouldn't just open a case, just to open one.

108. Ms. Steinhoff assumed the county child protection services would do better than SMSC which had treated her so unfairly. But, county child protection services informed her that they would not open a case because SMSC already had a case open.

109. The SMSC child protection services complaint contained false allegations related to Ms. Steinhoff which she eventually proved to be false.

110. Nevertheless, although the tribal child welfare proceeding remained open for a long time, it would be eventually closed. However, the SMSC Tribal Court would retain jurisdiction over the child as a ward of the tribal court.

111. In 2017, Ms. Steinhoff had a meeting with T.J.'s school staff, namely, her child's Independent Education Program-Plan (IEP) team. The IEP team is the group of people, including parents and school district staff that are responsible for creating a student's IEP.

112. An IEP is an important document that contains information regarding a student's academic, functional, social, and behavior needs and how the school district will assist in helping the student make gains in these areas.

113. It is critical for the student that the IEP accurately reflects the student's current educational capabilities and challenges.

114. During the IEP meeting, Ms. Steinhoff met personally with school staff while Mr. Jones attended by phone.

115. The IEP meeting was to be between only the parents of the child and school staff.

116. Ms. Steinhoff later learned that Mr. Jones, attending by phone and identifying only himself on the phone for the IEP meeting, did not disclose during the meeting that on his end of the line were the SMSC child-welfare director, another SMSC child-welfare official, and a SMSC education department official. They did not announce themselves as attendees with Mr. Jones for the IEP meeting.

117. The IEP meeting discussed T.J.'s grades and struggles with certain classes. T.J. was not truant.

118. After that IEP meeting, without Ms. Steinhoff's permission or knowledge, a SMSC child welfare official went to T.J.'s school, pulled T.J. from class, and met with T.J.

119. A few days after the SMSC child-welfare official's visit, the official contacted Ms. Steinhoff. The SMSC official stated that she was concerned about T.J.'s attendance. Within 48 hours, Ms. Steinhoff received a call from a SMSC attorney stating that SMSC would be opening up a child welfare case. The SMSC did so. There were other false allegations that Ms. Steinhoff proved not to be true. The SMSC case remains open.

120. SMSC did not contact Scott County regarding SMSC's attempt to strip Ms. Steinhoff's custody of T.J.

121. Ms. Steinhoff's SMSC 2017 child-protection services case remains open for a tutoring plan.

122. Ms. Steinhoff does not believe SMSC provides a good environment for T.J.

123. For instance, Ms. Steinhoff has read that because of the success of the SMSC Mystic Lake Casino and Resort resulting in almost a million dollars in per capita payments to SMSC adult members, SMSC member children can look forward to wealthy lives without ever opening a textbook.

124. Ms. Steinhoff has read that SMSC's high school graduation rate is about 56%. This low graduation rate is particularly disconcerting to her.

125. Even though T.J. has some difficulty in school, Ms. Steinhoff is confident that through the particularized and individualized IEP, her child is getting the greater benefit the public school district has to offer.

Other members of Americans for Tribal Court Equality.

126. Other members of Americans for Tribal Court Equality have been victims of the Defendants' violative policies and customs.

127. In fact, this lawsuit is the second one against the Commissioner's policy of transferring non-reservation child custody proceedings to the tribes without a state court hearing and without obtaining parental consent first—both required by the Indian Child Welfare Act.

128. The earlier lawsuit against Commissioner Piper, still pending in U.S. District Court, was brought by Kimberly Watso regarding her two children and the assertion of tribal

court jurisdiction without a prior state court proceeding and without her prior parental consent.

129. Ms. Watso is a member of Americans for Tribal Court Equality.

LAW, POLICIES, CUSTOMS, AND PRACTICES

1. The ICWA grants state court exclusive jurisdiction under certain circumstances where both parents do not consent to tribal-court transfer.

130. 25 U.S.C. §1911 (a), grants state court original, exclusive jurisdiction under certain circumstances where both parents do not consent to transfer to tribal court.

131. First, state courts under 25 U.S.C. §1911 (a) have original, exclusive jurisdiction over child custody proceedings involving tribal children residing off the reservation. In these situations, the state may transfer the child custody proceeding to the tribe if neither parent objects. If a parent objects, the child custody proceeding remains with the Defendants.

132. Second, state courts under 25 U.S.C. §1911(a) have original, exclusive jurisdiction over child custody proceedings involving tribal children residing on Public Law 280 tribe reservations – explained further below. In these situations, the state may transfer the child custody proceeding to the tribe if neither parent objects. If a parent objects, the child custody proceeding remains with the Defendants.

133. All Indian tribes and Indian communities in Minnesota, except Red Lake Nation, are subject to Public Law 280 Act of August 15, 1953, 57 Stat. 588, 83 Cong. Ch. 505 (Public Law 280) ("Public Law 280 tribes").

134. There are five states with Public Law 280 tribes: California, Minnesota, Nebraska, Oregon and Wisconsin.[2]

135. Public Law 280 tribes do not have original jurisdiction nor exclusive jurisdiction over member children and their child custody proceedings unless the Public Law 280 tribe has successfully petitioned the Department of the Interior to reassume exclusive jurisdiction over child custody proceedings under 25 U.S.C. § 1918.

136. 25 U.S.C. § 1918 provides:

> (a) Petition; suitable plan; approval by Secretary
> Any Indian tribe which became subject to State jurisdiction pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588), as amended by title IV of the Act of April 11, 1968 (82 Stat. 73, 78), or pursuant to any other Federal law, may reassume jurisdiction over child custody proceedings. Before any Indian tribe may reassume jurisdiction over Indian child custody proceedings, such tribe shall present to the Secretary for approval a petition to reassume such jurisdiction which includes a suitable plan to exercise such jurisdiction.

137. A few Public Law 280 tribes have successfully petitioned under 25 U.S.C. § 1918 to reassume exclusive jurisdiction over child custody proceedings involving children residing on reservation.

138. For example, the following three tribes have successfully petitioned: Red Cliff Band of Lake Superior Chippewa Indians of Bayfield, Wisconsin, Fed. Reg. Vol. 61, No. 15, at 1778, F.R. Doc. 96-815 (Jan. 22, 1996); Washoe Tribe of Nevada and California, Federal Register Vol. 61, No. 15, at 1779, FR Doc. 96-816 (Jan. 22, 1996); and Forest Lake

[2] 57 Stat. 588 ("An act [t]o confer jurisdiction on the States of California, Minnesota, Nebraska, Oregon and Wisconsin, with respect to criminal offenses and civil causes of action committed or arising on Indian reservations within such States, and for other purposes.").

Potawatomi Community of Crandon, Wisconsin, Federal Register Vol. 62, No. 7, at 1471, FR Doc. 97-572 (Jan. 9, 1997).

139. None of Minnesota's Public Law 280 tribes has successfully petitioned under 25 U.S.C. § 1918 to reassume exclusive jurisdiction over tribal children residing on their Public Law 280 reservations.

140. If the Public Law 280 tribe has not successfully petitioned, then the tribe's jurisdiction is limited to receipt of transferred tribal-member-child-custody cases by the state court after neither parent objects in state court to the transfer.

141. California has two notable, published cases opining on Indian Child Welfare Act jurisdiction and Public Law 280.

142. First, in *Doe v. Mann,* the U.S. Court of Appeals for the Ninth Circuit held that the Indian Child Welfare Act did not provide exclusive jurisdiction to a California Public Law 280 tribe because the tribe failed to "present to the Secretary [of the Interior] for approval a petition to reassume such jurisdiction which includes a suitable plan to exercise such jurisdiction." 415 F.3d 1038, 1061 (9th Cir. 2005),

143. Public Law 280's civil regulatory jurisdiction, when combined with the provisions of ICWA, divest the tribe of exclusive jurisdiction over involuntary child custody proceedings.

144. Under ICWA's § 1918(a), there was a requirement for the tribe to submit a petition and plan to the Secretary of the Interior (Secretary) to regain exclusive jurisdiction over child custody proceedings involving children residing on the reservation.

145. Second, in *In re M.A.,* a California appellate court in 2006 held that although the Public Law 280 tribe had not followed the statutory procedure to reassume exclusive jurisdiction under 25 U.S.C. § 1918, the Public Law 280 tribe could still petition in state court for the transfer of an Indian child if neither parent objects. 137 Cal.App.4th 567, 40 Cal.Rptr.3d 439 (2006).

146. The Indian Child Welfare Act, 25 U.S.C. § 1911(a), states in part:

> An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe *except where such jurisdiction is otherwise vested in the State by existing Federal law.*

(Emphasis added).

147. Only the State, and not the tribe, has exclusive jurisdiction under the Indian Child Welfare Act, 25 U.S.C. § 1911(a) over any Indian children of a Public Law 280 Indian tribe and over any Indian children residing off a reservation.

148. Under § 1911(b) of the Indian Child Welfare Act, a state district court proceeding is required to transfer child custody proceedings to tribal jurisdiction. The state district court can only transfer to tribal jurisdiction if *both parents do not object to the transfer* of the child custody proceeding to tribal court:

> In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, *absent objection by either parent*, upon the petition of either parent or the Indian custodian or the Indian child's tribe.

(Emphasis added.)

2. Under the state's and county's written policy and custom, Indian children are transferred to tribal jurisdiction on child custody proceedings without first commencing a state district court action and without first obtaining both parents' consent, contrary to federal law.

149. The Minnesota Department of Human Services' promulgated and distributed to all 87 counties within Minnesota a manual relating to procedures for counties to transfer Indian minor children to Indian tribes. The manual is referred to as "Minnesota's Indian Child Welfare Manual."

150. The Minnesota Indian Child Welfare Manual prescribes the Department of Human Services' policies that both county and private entities are to apply and follow regarding Indian children and the transfer of those children to tribal jurisdiction:

> This manual applies to both county social service agencies and private child-placing agencies." Indian Child Welfare Manual at 5.

151. Minnesota's Department of Human Services Indian Child Welfare Manual reflects a procedure to follow regarding the child's status with the child's tribe, which includes the County automatically transferring the matter to tribal jurisdiction:

> 3.4 Determination of Tribal and State Court Jurisdiction
>
> ***
>
> General requirements. Once a local social service agency has determined that a proposed Indian child custody proceeding is subject to the Indian Child Welfare Act, the Minnesota Indian Family Preservation Act, and has identified an Indian child's tribe(s) as required, a local social service agency, *prior to initiating any such proceeding in court,* shall contact a child's tribe(s) to determine whether a child is a ward of tribal court and/or is domiciled on an Indian reservation.
>
> ***

2. Child is a ward of tribal court:
a. Except in an emergency as described in subparagraph (2)(b), any proposed child custody proceeding involving an Indian child who is a ward of tribal court, regardless of the residence or domicile of a child, *must be referred to the tribal social service agency for appropriate proceedings in tribal court.* Local social service agencies are encouraged to inform parent(s) or Indian custodian(s) of the referral. Following the referral, a local social service agency should provide such technical or professional advice, support or cooperation as a tribal social service agency or designated tribal representative may reasonably request.

***

3. Child resides or is domiciled within an Indian reservation and is not a ward of tribal court.

a. Except in an emergency as described in subparagraph 3(b), *a local social service agency shall refer any proposed child custody proceeding involving an Indian child to the tribal social service agency for appropriate proceedings in tribal court*…

***

4. Child is not a resident or domiciliary of an Indian reservation or a ward of tribal court:
a. Except in an emergency as described in subparagraph (4)(b), *a local social service agency shall refer any proposed Indian child custody proceeding involving an Indian child to the tribal social service agency for appropriate proceedings in tribal court.* This requirement applies to a child whose tribe has established a tribal court and vested it with jurisdiction over child custody placement proceedings but who is neither a resident nor a domiciliary of an Indian reservation. Local social service agencies shall give written notice of any referral pursuant to this subparagraph to a child's parent(s) or Indian custodian, designated tribal representative and tribal court, and shall make the referral unless:
(1) A local social service agency, after consulting with a designated tribal representative,
concludes that there is good cause to the contrary;
(2) Either parent of a child objects, in writing, to the referral; or
(3) A designated tribal representative declines, in writing, to accept the referral or the tribal court declines, in writing, to accept jurisdiction over a proposed proceeding.

Indian Child Welfare Manual at 25–26 (emphasis added).

152. Minnesota's Indian Child Welfare Manual reflects the defendants' policy, custom and practice regarding "any proposed child custody proceeding involving an Indian child."

153. Minnesota's Indian Child Welfare Manual reflects defendants' policy, custom and practice regarding "any proposed child custody proceeding involving an Indian child."

154. Minnesota's Indian Child Welfare Manual reflects defendants' policy, custom and practice to "refer any proposed child custody proceeding involving an Indian child to the tribal social service agency for appropriate proceedings in tribal court." (Emphasis added).

155. Minnesota's Indian Child Welfare Manual reflects defendants' policy, custom and practice to "refer any proposed child custody proceeding involving an Indian child to the tribal social service agency for appropriate proceedings in tribal court…"

156. But, the defendants' policies and practices are preempted by 25 U.S.C. §1911 (a) which establishes that states, not tribes, have exclusive civil adjudicative jurisdiction over child custody proceedings involving all Indian minor children residing off reservations and those of Public Law 280 tribes who have not petitioned to reassume exclusive jurisdiction.

157. Under 25 U.S.C. §1911 (a), the state, not the tribe, is vested with exclusive civil adjudicative jurisdiction over child custody disputes involving Indian minor children living off the reservation. The defendants' policies and customs illegally circumvent the 25 U.S.C. §1911 (a)'s mandate that the state has this exclusive civil adjudicative jurisdiction.

158. Under 25 U.S.C. §1911 (a), the state, not the tribe, is vested with exclusive civil adjudicative jurisdiction over child custody disputes involving minor children of Public

159. Therefore, the federal Indian Child Welfare Act preempts Minnesota Indian Child Welfare Manual to the extent the defendants' written policy and custom deprives the state of exclusive civil adjudicative jurisdiction over Indian minor children residing off of reservations and over Indian minor children residing on Public Law 280 tribe reservations whose Public Law 280 tribes have not petitioned under 25 U.S.C. §1918 to reassume exclusive jurisdiction.

160. Further, Section 1911 (b) allows the state court to transfer jurisdiction *only if* both parents consent to the transfer after notice from the state in a pending state court proceeding.

161. Section 1911(b) provides:

> (b) Transfer of proceedings; declination by tribal court
> In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe: *Provided*, That such transfer shall be subject to declination by the tribal court of such tribe.

(Emphasis added.)

162. So, under § 1911(b), the state court cannot transfer the child custody proceeding to tribal jurisdiction if any parent, including the non-tribal parent, objects in the federally-required state court proceeding.

163. For Public Law 280 tribes, § 1918(a) creates a process for Public Law 280 tribes to reassume exclusive civil adjudicative jurisdiction over child custody proceedings:

> Any Indian tribe which became subject to State jurisdiction pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588), as amended by Title IV of the Act of April 11, 1968 (82 Stat. 73, 78) [Public Law 280], or pursuant to any other Federal law, may reassume jurisdiction over child custody proceedings. Before any Indian tribe may reassume jurisdiction over Indian child custody proceedings, such tribe shall present to the Secretary for approval a petition to reassume such jurisdiction which includes a suitable plan to exercise such jurisdiction.

164. Through the use of the term "reassume," Congress manifested its awareness that states would continue to exercise exclusive jurisdiction over child custody proceedings involving children of Public Law 280 tribes.

165. In § 1918, Congress provided Public Law 280 tribes the opportunity to obtain exclusive jurisdiction by following a detailed procedure including an application to the Department of the Interior. *See* 25 U.S.C. §§ 1918(a), (b); 25 C.F.R. § 13.12.

166. Absent an attempt to follow that administrative protocol, however, states exercise exclusive jurisdiction over child custody proceedings involving children of Public Law 280 tribes on Public Law 280 tribe reservations—as well as all Indian children residing off reservations.

167. Plaintiffs assert that Section 1918(a) would make little sense unless § 1911(a) requires states to exercise exclusive jurisdiction over child custody proceedings involving children of Public Law 280 tribes.

168. Section 1918(a) provides a mechanism for the Public Law 280 tribes to reassume exclusive jurisdiction.

169. But unless states have exclusive jurisdiction over child custody proceedings involving children of Public Law 280 tribes, there is nothing for tribes to reassume under § 1918.

170. It would be illogical to give exclusive jurisdiction back to the Public Law 280 tribes under § 1918(a) if such jurisdiction were not part of the exception under § 1911(a).

171. Further, the Plaintiffs assert that 25 CFR Part 23 confirms that state courts have exclusive civil adjudicative jurisdiction over child custody proceedings involving children of Public Law 280 tribes and must transfer such cases to tribal court as long as certain conditions including that neither parent objects.

172. The Code of Federal Regulations states, "The final rule reflects 25 U.S.C. 1911 (b)'s requirement that a child-custody proceeding be transferred to Tribal court upon petition of either parent or the Indian custodian or the Indian child's tribe, except in three circumstances: (1) where either parent objects…" Fed. Reg., Vol. 81, No. 114 at 38821 (June 14, 2016).

173. The Plaintiffs assert that consistent with these federal laws, the Minnesota Indian Family Preservation Act (MIFPA) incorporates the text of 25 U.S.C. §1911(a) and its establishment of exclusive civil adjudicative jurisdiction over child custody proceedings involving children of Public Law 280 tribes:

> 260.771 CHILD PLACEMENT PROCEEDINGS.
> Subdivision 1. Indian tribe jurisdiction. An Indian tribe has exclusive jurisdiction over a child placement proceeding involving an Indian child who resides or is domiciled within the

> reservation of the tribe, except where jurisdiction is otherwise vested in the state by existing federal law.

Minn. Stat. § 260.771.

174. Furthermore, the 2007 Tribal–State Agreement between the State of Minnesota and its Public Law 280 tribes states:

> No provision of this Agreement is intended to change the jurisdictional provision set forth in the Indian Child Welfare Act in any manner.

175. Ironically, the Minnesota DHS Indian Child Welfare Manual, despite the challenged policy quoted above, also purports to comply with the jurisdictional provisions of the Indian Child Welfare Act and Public Law 280:

> The Indian Child Welfare Act provides that tribes have exclusive jurisdiction "over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law." [25 U.S.C. § 1911(a)]

DHS Indian Child Welfare Manual at 25.

176. Finally, the Ninth Circuit in addressing similar jurisdictional issues under the Indian Child Welfare Act wrote:

> Consistent with ICWA [i.e., the Indian Child Welfare Act], California, a mandatory Public Law 280 state, has been exercising at least concurrent jurisdiction over dependency proceedings involving Indian children. With the drop of a hat, Mary Doe would have us undo this statutory and historical framework and immediately vest exclusive jurisdiction in the tribes. Such a result surely would eviscerate the unambiguous Public Law 280 exception in ICWA. From an ultimate perspective of public policy and in furtherance of the goal of tribal sovereignty over the destiny of Indian children, a transition from Public Law 280 jurisdiction to tribal jurisdiction

> in child custody proceedings may well be appropriate. But we believe this is a judgment for Congress to make, not the courts.

Doe v. Mann, 415 F.3d 1038, 1068 (9th Cir. 2005).

177. Minnesota's policy reflected in the Minnesota Indian Children Welfare Manual violates the federal Indian Children Welfare Act by vesting exclusive jurisdiction in tribes by requiring county social service agencies such as Scott County, prior to initiating state court proceedings, to refer and transfer the child custody matters to tribal social services to initiate tribal proceedings even though the Indian children reside off reservation or on Public Law 280 tribe reservations.

178. In this way, DHS's and Scott County's written policy and custom circumvent the ICWA federal requirement of parental consent prior to a state court transfer to tribal court.

179. DHS's and Scott County's custom and policy violate parental rights under ICWA to object to the transfer to tribal court.

180. Because of Scott County's referral to SMSC social services agency, SMSC initiates tribal court proceedings instead of following the Indian Children Welfare Act which requires the County to initiate a state court proceeding, give notice to the parents and obtain parental consent prior to transferring a child custody proceeding of an Indian minor child of a Public Law 280 tribe or an Indian minor child living off a reservation to tribal court.

181. SMSC tribal court asserts jurisdiction over child custody proceedings involving Public Law 280 children on and off its reservation violating the ICWA requirements of initiating a state court proceeding and obtaining parental consent prior to transferring a child custody proceeding of an Indian minor child to tribal court.

CAUSES OF ACTION

COUNT I
The federal Indian Child Welfare Act statutorily preempts the defendants' policies and customs of transferring child custody matters to the tribe without a prior state court proceeding where parents can object to the tribal transfer.

182. The previous paragraphs are incorporated in their entirety.

183. In this count II, Plaintiffs bring a Supremacy Clause claim against the DHS Commissioner and Scott County based on ICWA statutorily preempting the Defendants' policies and customs.

184. The ICWA requires that before a tribal court has jurisdiction over a child-custody matter regarding Indian minor children off a reservation or on a Public Law 280 tribe reservation (where the Public Law 280 tribe has not successfully petitioned to reassume exclusive jurisdiction), the state or county agency must first initiate a state court proceeding and ensure that neither parent objects prior to the tribal court having jurisdiction.

185. In direct conflict with the ICWA, Minnesota's Department of Human Services Indian Child Welfare Manual prescribes procedures where the County refers child custody matters involving such Indian minor children to tribes without a state court proceeding and without obtaining, in the state court proceeding, both parents' consent to tribal-court transfer. Indian Child Welfare Manual at 25–26.

186. The illegal effect of Minnesota's Indian Child Welfare Manual is that the tribal courts erroneously assert civil adjudicative jurisdiction over child custody proceedings involving Indian minor children living off the reservation and on Public Law 280 tribe reservation without the federally-required state court proceeding to determine whether either parent objects to such tribal-court transfer.

187. Therefore, under the U.S. Constitution's Supremacy Clause, the ICWA preempts the Indian Child Welfare Manual because the ICWA requires a state court proceeding first to determine whether either parent objects to transfer to tribal court.

188. Prior to that state court proceeding, the tribal court does not have jurisdiction over a child custody matter involving Indian minor children living off the reservation and does not have jurisdiction over a child custody matter involving Indian minor children residing on Public Law 280 tribe reservations (unless the Public Law 280 tribe has successfully petitioner the U.S. Department of the Interior to reassume exclusive jurisdiction under 25 U.S.C. § 1918).

189. In these cases, the state has exclusive civil adjudicative jurisdiction unless 25 U.S.C. § 1911 (b) is satisfied prior to a tribal-court transfer.

190. The tribal court proceedings regarding A.N., T.J. and similar tribal court proceedings involving off-reservation Indian minor children and Public Law 280 Indian minor children lack subject matter jurisdiction because the tribal court proceedings are in violation of the ICWA.

191. The Defendants are federally required to implement the state's exclusive civil adjudicative jurisdiction against a tribal court proceeding which lacks subject matter jurisdiction because the ICWA's requirements for tribal jurisdiction have not been met.

192. Therefore, the Defendants have violated the Indian Child Welfare Acct by not implementing the state's exclusive civil adjudicative jurisdiction against a tribal court proceeding which lacks subject matter jurisdiction because the ICWA's requirements for tribal jurisdiction have not been met.

193. The Plaintiffs request from this Court a declaratory judgment and injunction enjoining Defendants' application of the Indian Child Welfare Manual because it violates the ICWA and the Constitution.

194. Additionally, the Plaintiffs request from this Court an injunction requiring the County to implement exclusive civil adjudicative jurisdiction over the child custody matters of A.N. and T.J. as the SMSC tribal court proceedings involving A.N. and T.J. lack subject matter jurisdiction until the federal requirements are met.

COUNT II
42 U.S.C. § 1983 claim that defendants' policies and customs violate the plaintiffs' substantive due process rights under the Constitution.

195. The previous paragraphs are incorporated in their entirety.

196. In this count II, Plaintiffs bring 42 U.S.C. § 1983 claims against the DHS Commissioner and Scott County for violating their substantive due process rights as protected by the U.S. Constitution.

197. Plaintiffs seek damages against Scott County—not against the State.

198. The Due Process Clause of the Fourteenth Amendment provides that no State shall "deprive any person of life, liberty, or property, without due process of law."

199. The Due Process Clause "includes a substantive component that provides heightened protection against government interference with certain fundamental rights and liberty interests."

200. The liberty interest of parents in the care, custody, and control of their children-is perhaps the oldest of the fundamental liberty interests recognized by the U.S. Supreme Court for protection under the Due Process Clause.

201. A natural parent is presumed fit and suitable to care for his or her child.

202. It is presumed that a child's best interests entail remaining in a natural parent's care, custody and control.

203. There is a recognized substantive due process right to freedom from governmental interference in a parent's childbearing decisions.

204. Parents have a fundamental interest in childrearing and in childbearing decisions.

205. Parents have a fundamental right to the custody and companionship of their children.

206. The government must assume that a fit parent's childrearing decision is in the best interests of the child.

207. The custody, care, and nurture of a child reside first with the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.

208. Under the ICWA, the tribal courts do not have jurisdiction over child custody proceedings involving children of Public Law 280 tribes and Indian minor children off the reservation until after a state court proceeding where neither parent objects to tribal-court transfer. If either parent objects to the transfer to tribal court, the tribal court under the ICWA does not have jurisdiction over the child custody proceeding.

209. Mr. Nguyen was never found to be an unfit parent by any court or agency.

210. Ms. Steinhoff was never found to be an unfit parent by any court or agency.

211. A.N. did not reside and was not domiciled within the SMSC reservation.

212. T.J. did not reside and was not domiciled within the SMSC reservation.

213. DHS's and Scott County's policies and customs violate Plaintiffs' substantive due process rights to an initial state court proceeding where either parent can object to transfer to tribal court.

214. DHS and Scott County have violated Plaintiffs' substantive due process rights by allowing the child custody proceedings regarding A.N. and T.J. to be in tribal court without the state court proceeding and without Mr. Nguyen's and Ms. Steinhoff's consent to tribal-court transfer.

215. SMSC tribal court's order which results in the curtailment of or otherwise threatens the termination of parental rights engages the federally protected rights of the parents involved.

216. A tribal court order that asserts jurisdiction over a child as a "ward of the court" means that the tribal court must be consulted regarding decisions of the parent regarding the care, custody, and control of the child.

217. When a child is a ward of the tribal court, the tribal court can override the decisions of the parent.

218. The policy and custom of the Defendants violate the substantive due process rights of non-member parents such as Mr. Nguyen and Ms. Steinhoff regarding their Indian children of a Public Law 280 tribe and other children who do not reside or are not domiciled within Minnesota reservations (with the sole exception of Red Lake).

219. The Defendants' policy and custom do not allow a parent in a state court proceeding to object to the tribal-court transfer.

220. The Defendants' policies and customs deprive the parent from making a decision regarding the jurisdiction under which the child will be subjected.

221. The Defendants' policies and customs permit tribal court proceedings to continue where the Defendants have exclusive civil adjudicative jurisdiction.

222. The Defendants' policies and customs fail to provide the Plaintiffs with the federally-required state court proceeding with parental notice and opportunity to object to the tribal-court transfer prior to the Defendants' tribal transfer.

223. The Defendants' policies and customs require allowing tribal court child custody proceedings regardless of the parent's objections to tribal-court transfer—which violates Plaintiffs' parental rights to substantive due process.

224. Additionally, Mr. Nguyen cannot file a child protection complaint with Scott County because if he were to do so, the County would, without notice or hearing, transfer the matter to SMSC automatically as the Defendants' policies and customs require.

225. Mr. Nguyen is presently in an untenable setting in which the SMSC has intentionally discriminated against him and continues to do so because he is a non-member while SMSC proceedings allow the child to be exposed to dangerous settings involving SMSC member and his current wife Ms. Gustafson, despite the tribal knowledge of her instability.

226. Ms. Steinhoff has experienced SMSC's false accusations against her as a non-member. Meanwhile, if she reported to Scott County the instability of her child's biological father, it would also result in an automatic transfer to SMSC without notice or hearing as a result of the Defendants' policies and customs.

227. Neither parent can exercise their substantive due process rights under the Defendants' policies and customs.

228. The unnecessary and illegal tribal court proceedings have caused Plaintiffs' financial and psychological burdens interfering with and damaging family relationships – all caused by DHS's and Scott County's policies and customs.

229. DHS' and Scott County's violations have caused damages to Plaintiffs in an amount exceeding $75,000.

230. Plaintiffs seek damages from Scott County in an amount exceeding $75,000.

231. The Plaintiffs request from this Court a declaratory judgment and injunction enjoining Defendants' application of the Indian Child Welfare Manual to the extent it violates the Plaintiffs' substantive due process rights.

232. Additionally, the Plaintiffs request from this Court an injunction requiring the County to apply exclusive jurisdiction over the child custody matters of A.N. and T.J. as the SMSC tribal court proceedings involving A.N. and T.J. lack subject matter jurisdiction until the federal requirements of the Constitution and ICWA are met.

COUNT III
42 U.S.C. § 1983 claim that defendants' policies and customs violate the plaintiffs' procedural due process rights under the Constitution.

233. The previous paragraphs are incorporated in their entirety.

234. In this count III, Plaintiffs bring 42 U.S.C. § 1983 claims against the DHS Commissioner and Scott County for violating their procedural due process rights as protected by the U.S. Constitution.

235. Plaintiffs seek damages against Scott County—not against the State.

236. The Due Process Clause of the Fourteenth Amendment provides that no State shall "deprive any person of life, liberty, or property, without due process of law."

237. The Due Process Clause has a procedural component which requires notice and an opportunity to be heard.

238. The liberty interest of parents in the care, custody, and control of their children-is perhaps the oldest of the fundamental liberty interests recognized by the U.S. Supreme Court for protection under the Due Process Clause.

239. A natural parent is presumed fit and suitable to care for his or her child.

240. It is presumed that a child's best interests entail remaining in a natural parent's care, custody and control.

241. There is a recognized procedural due process right to notice and opportunity to be heard prior to governmental interference in a parent's childbearing decisions.

242. Parents have a fundamental interest in childrearing and in childbearing decisions.

243. Parents have a fundamental right to the custody and companionship of their children.

244. The government must assume that a fit parent's childrearing decision is in the best interest of the child.

245. The custody, care, and nurture of a child reside first with the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.

246. Under the ICWA, the tribal courts do not have jurisdiction over child custody proceedings involving children of Public Law 280 tribes and Indian minor children off the reservation until after a state court proceeding where neither parent objects to tribal transfer. If either parent objects to the transfer to the tribe, the tribal court under the ICWA does not have jurisdiction over the child custody proceeding.

247. Mr. Nguyen was never found to be an unfit parent by any court or agency.

248. Ms. Steinhoff was never found to be an unfit parent by any court or agency.

249. A.N. did not reside and was not domiciled within the SMSC reservation.

250. T.J. did not reside and was not domiciled within the SMSC reservation.

251. DHS's and Scott County's policies and customs permit tribal child custody proceedings involving children of Public Law 280 tribes and Indian minor children off the reservation in violation of Plaintiffs' constitutionally protected right to notice and opportunity to be heard in state court prior to a transfer to the tribe.

252. DHS's and Scott County's policies and customs violate Plaintiffs' rights to procedural due process in an initial state court proceeding where either parent, after notice and opportunity to be heard, can object to transfer to the tribe.

253. DHS and Scott County have violated the procedural due process rights of Plaintiffs by allowing the child custody proceedings regarding A.N. and T.J. to be conducted by the tribe without the prior state court proceeding' notice and opportunity to be heard and without Mr. Nguyen's and Ms. Steinhoff's consent to tribal transfer.

254. SMSC tribal court's order which results in the curtailment of or otherwise threatens the termination of parent rights engages the federally protected rights of the parent.

255. A tribal court order that asserts jurisdiction over a child as a "ward of the court" means that the tribal court must be consulted regarding decisions of the parent regarding the care, custody, and control of the child.

256. When a child is a ward of the tribal court, the tribal court can override the decisions of the parent.

257. The policy and custom of the Defendants violate the procedural due process rights of non-member parents such as Mr. Nguyen and Ms. Steinhoff regarding their Indian children of a Public Law 280 tribe and other children who do not reside or are not domiciled within Minnesota reservations (with the sole exception of Red Lake).

258. The Defendants' policies and customs, without notice and an opportunity to be heard, deprive the parent from making a decision regarding the jurisdiction under which the child will be subjected.

259. The Defendants' policies and customs permit tribal court proceedings to continue where the Defendants have exclusive civil adjudicative jurisdiction.

260. The Defendants' policies and customs fail to provide the Plaintiffs with the federally-required state court proceeding with parental notice and opportunity for a hearing to object to the tribal-court transfer prior to the Defendants' tribal transfer.

261. The Defendants' policies and customs, without parental notice and a hearing, require allowing tribal court child custody proceedings regardless of the parent's objections to tribal transfer—which violates Plaintiffs' parental rights to procedural due process.

262. Additionally, Mr. Nguyen cannot file a child protection complaint with Scott County because if he were to do so, the County would, without notice or hearing, transfer the matter to SMSC automatically as the Defendants' policies and customs require.

263. Mr. Nguyen is presently in an untenable setting in which the SMSC has intentionally discriminated against him and continues to do so because he is a non-member while SMSC proceedings allow the child to be exposed to dangerous settings involving SMSC member and his current wife Ms. Gustafson, despite the tribal knowledge of her instability.

264. Ms. Steinhoff has experienced SMSC's false accusations against her as a non-member. Meanwhile, if she reported to Scott County the instability of her child's biological father, it would also result in an automatic transfer to SMSC without notice or hearing as a result of the Defendants' policies and customs.

265. Neither parent can exercise their procedural due process rights under the Defendants' policies and customs.

266. The unnecessary and illegal tribal court proceedings have caused Plaintiffs' financial and psychological burdens interfering with and damaging family relationships – all caused by DHS's and Scott County's policies and customs.

267. The Defendants' policies and customs violate the Plaintiffs' procedural due process rights.

268. DHS' and Scott County's violations have caused damages to Plaintiffs in an amount exceeding $75,000.

269. Plaintiffs seek damages from Scott County in an amount exceeding $75,000.

270. The Plaintiffs request from this Court a declaratory judgment and injunction enjoining Defendants' application of the Indian Child Welfare Manual to the extent it violates the Constitution.

271. Additionally, the Plaintiffs request from this Court an injunction requiring the County to apply exclusive jurisdiction over the child custody matters of A.N. and T.J. as the SMSC tribal court proceedings involving A.N. and T.J. lack subject matter jurisdiction until the federal requirements of the Constitution and ICWA are met.

COUNT IV
42 U.S.C. § 1983 claim that Defendants' policies and customs violate the plaintiffs' procedural rights under ICWA.

272. The previous paragraphs are incorporated in their entirety.

273. In this count IV, Plaintiffs bring 42 U.S.C. § 1983 claims against the DHS Commissioner and Scott County for violating their ICWA procedural rights.

274. Plaintiffs seek damages against Scott County—not against the State.

275. Under the ICWA, the tribal courts do not have jurisdiction over child custody proceedings involving children of Public Law 280 tribes and Indian minor children off the reservation until after a state court proceeding where neither parent objects to tribal-court transfer. If either parent objects to the transfer to tribal court, the tribal court, under the ICWA, does not have jurisdiction over the child custody proceeding.

276. Mr. Nguyen was never found to be an unfit parent by any court or agency.

277. Ms. Steinhoff was never found to be an unfit parent by any court or agency.

278. A.N. and T.J. are members of SMSC, a Public Law 280 tribe.

279. A.N. did not reside and was not domiciled within the SMSC reservation.

280. T.J. did not reside and was not domiciled within the SMSC reservation.

281. DHS's and Scott County's policies and customs permit tribal child custody proceedings involving children of Public Law 280 tribes and Indian minor children off the reservation in violation of Plaintiffs' procedural rights under the ICWA.

282. DHS's and Scott County's policies and customs violate Plaintiffs' parental rights under the ICWA to an initial state court proceeding where either parent can object to transfer to tribal court.

283. DHS and Scott County have violated the ICWA procedural rights of Plaintiffs by allowing the child custody proceedings regarding A.N. and T.J. to be in tribal court without the initial state court proceeding and without Mr. Nguyen's and Ms. Steinhoff's consent to tribal-court transfer.

284. SMSC tribal court's order which results in the curtailment of or otherwise threatens the termination of parental rights engages the federally protected rights of the parent.

285. A tribal court order that asserts jurisdiction over a child as a "ward of the court" means that the tribal court must be consulted regarding decisions of the parent regarding the care, custody, and control of the child.

286. When a child is a ward of the tribal court, the tribal court can override the decisions of the parent.

287. The policies and customs of Defendants violate the ICWA procedural rights of non-member parents such as Mr. Nguyen and Ms. Steinhoff.

288. The Defendants' policy and custom do not allow a parent in a state court proceeding to object to the tribal transfer.

289. The Defendants' policies and customs deprive the parent from making a decision regarding the jurisdiction under which the child will be subjected.

290. The Defendants' policies and customs permit tribal court proceedings to continue where the Defendants have exclusive civil adjudicative jurisdiction.

291. The Defendants' policies and customs fail to provide the Plaintiffs with the ICWA-required state court proceeding with parental notice and opportunity to object to the tribal-court transfer prior to the Defendants' tribal transfer.

292. The Defendants' policies and customs require allowing tribal court child custody proceedings regardless of the parent's objections to tribal-court transfer—which violates Plaintiffs' ICWA procedural rights.

293. Additionally, Mr. Nguyen cannot file a child protection complaint with Scott County because if he were to do so, the County would, without notice or hearing, transfer the matter to SMSC automatically as the Defendants' policies and customs require.

294. Mr. Nguyen is presently in an untenable setting in which the SMSC has intentionally discriminated against him and continues to do so because he is a non-member while SMSC proceedings allow the child to be exposed to dangerous settings involving SMSC member and his current wife Ms. Gustafson, despite the tribal knowledge of her instability.

295. Ms. Steinhoff has experienced SMSC's false accusations against her as a non-member. Meanwhile, if she reported to Scott County the instability of her child's biological father, it would also result in an automatic transfer to SMSC without notice or hearing as a result of the Defendants' policies and customs.

296. Neither parent can exercise their ICWA procedural rights under the Defendants' policies and customs.

297. The unnecessary and illegal tribal court proceedings have caused Plaintiffs' financial and psychological burdens interfering with and damaging family relationships—all caused by DHS's and Scott County's policies and customs.

298. The Defendants' policies and customs violate the Plaintiffs' ICWA procedural rights.

299. DHS' and Scott County's violations have caused damages to Plaintiffs in an amount exceeding $75,000.

300. Plaintiffs seek damages from Scott County in an amount exceeding $75,000.

301. The Plaintiffs request from this Court a declaratory judgment and injunction enjoining Defendants' application of the Indian Child Welfare Manual to the extent it violates the ICWA.

302. Additionally, the Plaintiffs request from this Court an injunction requiring the County to apply exclusive jurisdiction over the child custody matters of A.N. and T.J. as the SMSC tribal court proceedings involving A.N. and T.J. lack subject matter jurisdiction until the federal requirements of the Constitution and ICWA are met.

JURY TRIAL DEMANDED

303. The Plaintiffs hereby demand a jury trial.

RELIEF REQUESTED

The Plaintiffs seek judgment be entered against the Defendants as follows:

1. Declaring that the Defendants' policies and customs violate the Plaintiffs' constitutional and statutory rights as explained in Counts I, II, III and IV;

2. Issuing and injunction enjoining the D.H.S. and Scott County to stop their policies and customs to refer child custody matters to tribal social service agencies for tribal court proceedings prior to initiating a state court proceeding and prior to obtaining parental consent for such a transfer to tribal court;

3. Issuing an injunction enjoining the County to apply exclusive jurisdiction over the child custody matters of A.N. and T.J. as the SMSC tribal court lacks subject matter jurisdiction until the federal requirements of the Constitution and ICWA are met;

4. Awarding damages to Plaintiffs against Scott County (but not against the other defendant Emily Piper in her official capacity as Commissioner of the Minnesota Department of Human Services), in an amount exceeding $75,000;

5. Granting attorneys' fees and costs under 42 U.S.C. § 1988 and any other applicable law to the Plaintiffs' attorneys;

6. Granting Plaintiffs their costs, expenses, and attorneys' fee; and

7. Granting Plaintiffs all other relief that this Court deems just and equitable.

Dated: October 10, 2017.

/s/Erick G. Kaardal

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ATTORNEYS FOR PLAINTIFFS

VERIFICATION

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: October 10, 2017

/s/James Nguyen
James Nguyen

VERIFICATION

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: October 10, 2017

/s/Michelle Steinhoff
Michelle Steinhoff