In the DISTRICT court for the state of alaska

\_\_\_\_\_\_\_\_\_\_\_\_ judicial district at \_\_\_\_\_\_\_\_\_\_\_\_

In the Matter of: )

)

\_\_\_\_\_\_\_\_\_\_\_\_, dob \_\_\_\_\_\_\_\_, )

)

child under the age of eighteen (18). ) Case No. \_\_\_\_\_\_\_\_\_\_\_\_

)

MOTION TO COMPEL OCS TO PROVIDE RECORD OF PLACEMENT

COMES NOW \_\_\_\_\_\_\_\_\_\_\_\_, a non-attorney representative of the Native Village of \_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter “the Tribe”), and requests that the Court issue an order compelling the Office of Children’s Services (OCS) to produce a record of placement pursuant to 25 U.S.C. § 1915(e), evidencing its efforts to comply with the placement preferences of the Indian Child Welfare Act (ICWA). A supporting memorandum, exhibit, and proposed order are attached and filed herewith.

Dated this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 20\_\_.

THE NATIVE VILLAGE OF \_\_\_\_\_\_\_\_\_\_\_\_

P.O. Box \_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_, AK 99\_\_\_\_\_\_\_\_

(907) \_\_\_\_\_\_\_\_\_\_\_\_

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ICWA Worker

Native Village of \_\_\_\_\_\_\_\_\_\_\_\_

In the DISTRICT court for the state of alaska

\_\_\_\_\_\_\_\_\_\_\_\_ judicial district at \_\_\_\_\_\_\_\_\_\_\_\_

In the Matter of: )

)

\_\_\_\_\_\_\_\_\_\_\_\_, dob\_\_\_\_\_\_\_\_, )

)

child under the age of eighteen (18). ) Case No.\_\_\_\_\_\_\_\_\_\_\_\_

)

MEMORANDUM IN SUPPORT OF TRIBE’S MOTION TO COMPEL OCS TO PROVIDE RECORD OF PLACEMENT

\_\_\_\_\_\_\_\_\_\_\_\_, a non-attorney representative of the Native Village of \_\_\_\_\_\_\_\_\_\_\_\_, submits this memorandum in support of the *Motion to Compel* (hereinafter “the Tribe’s motion”).

The child at issue in this case (hereinafter “the Child”) is an Indian child, as defined by 25 U.S.C. § 1903(4), and the Native Village of \_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter “the Tribe”) is the Indian child’s tribe, as defined by 25 U.S.C. § 1903(5). Therefore, this case is subject to the Indian Child Welfare Act (ICWA).[[1]](#footnote-1)

Section 1915(b) of ICWA mandates that any Indian child eligible for foster care or pre-adoptive placement (absent good cause) be placed according to the following placement preferences:

1. with a member of the Indian child’s extended family (as defined by tribal law or custom);
2. with a foster home licensed, approved, or specified by the Indian child’s tribe;
3. with an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
4. with an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child’s needs.[[2]](#footnote-2)

Furthermore, Section 1915(e) of ICWA requires that a record of each such placement be maintained.[[3]](#footnote-3) This record must detail the efforts made to comply with the previously-mentioned placement preferences and it shall be made available at any time upon the request of either the State or the Indian child’s tribe.[[4]](#footnote-4)

The Child is currently placed in a home that does not comply with ICWA’s placement preferences, because:

* The child is ***not*** placed in one of the four ICWA placement preferences.
* The child is placed in a lower ICWA placement preference when there is a higher ICWA placement preference available and OCS has not documented good cause to deviate.

On \_\_\_\_\_\_\_\_\_\_\_\_, the Tribe sent a letter to OCS requesting that it provide the Tribe with a record of its efforts to comply with ICWA within ten (10) days of the date of the letter. In the letter, the Tribe cited the authority conferred upon it by 25 U.S.C. § 1915(e).[[5]](#footnote-5) More than ten (10) days have passed since the letter was sent and the Tribe has yet to receive a response.

It is in the best interests of the Child that *he/she* be placed in a foster home that reflects the unique values of the Alaska Native culture.[[6]](#footnote-6) Therefore, the Tribe requests that the Court compel OCS to provide the Tribe with a record of the efforts that have been made to place the Child in an ICWA compliant foster home.

Dated this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 20\_\_.

THE NATIVE VILLAGE OF \_\_\_\_\_\_\_\_\_\_\_\_

P.O. Box \_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_, AK 99\_\_\_\_\_\_\_\_

(907) \_\_\_\_\_\_\_\_\_\_\_\_

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ICWA Worker

Native Village of \_\_\_\_\_\_\_\_\_\_\_\_

**VERIFICATION**

STATE OF ALASKA )

) ss:

\_\_\_\_\_\_\_\_ JUDICIAL DISTRICT )

I, \_\_\_\_\_\_\_\_\_\_\_\_, swear and affirm that the facts stated above are true and correct to the best of my knowledge.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ICWA Worker

Native Village of \_\_\_\_\_\_\_\_\_\_\_\_

SUBSCRIBED AND SWORN to before me this \_\_\_ day of \_\_\_\_\_, 20\_\_ at \_\_\_\_\_\_\_\_\_\_, Alaska.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public in and for the State of Alaska

My Commission Expires:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

In the DISTRICT court for the state of alaska

\_\_\_\_\_\_\_\_\_\_\_\_ judicial district at \_\_\_\_\_\_\_\_\_\_\_\_

In the Matter of: )

)

\_\_\_\_\_\_\_\_\_\_\_\_, dob \_\_\_\_\_\_\_\_, )

)

child under the age of eighteen (18). ) Case No. \_\_\_\_\_\_\_\_\_\_\_\_

)

**CERTIFICATE OF SERVICE**

I hereby certify that on this date, true and correct copies of the *Motion to Compel*, *Memorandum in Support of Tribe’s Motion to Compel*, proposed *Order*, and Exhibit 1, all filed in this proceeding, were mailed or delivered to the following parties of record:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, AAG

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, CASA/GAL

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, OCS

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Mother’s Attorney

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Father’s Attorney

Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Signature:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

In the DISTRICT court for the state of alaska

\_\_\_\_\_\_\_\_\_\_\_\_ judicial district at \_\_\_\_\_\_\_\_\_\_\_\_

In the Matter of: )

)

\_\_\_\_\_\_\_\_\_\_\_\_, dob \_\_\_\_\_\_\_\_, )

)

child under the age of eighteen (18). ) Case No. \_\_\_\_\_\_\_\_\_\_\_\_

)

**ORDER**

TO: STATE OF ALASKA, OFFICE OF CHILDREN’S SERVICES:

You are hereby ORDERED to provide the Native Village of \_\_\_\_\_\_\_\_\_\_\_\_, with a record of the efforts that have been made to place the above-captioned child in an ICWA compliant foster home. This record must be provided to the Tribe no later than \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The record must include the following information: (1) all relatives OCS has contacted as potential placements, dates of contact, and responses; (2) all Native foster homes OCS has contacted, dates of contact, and responses; (3) all non-Native foster homes OCS has contacted, dates of contact, and responses; (4) all institutional settings OCS has contacted (if applicable), dates of contact, and responses; and (5) for each of the above-referenced placements, the reason why that placement was not appropriate.

IT IS SO ORDERED.

Dated this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ JUDGE/MAGISTRATE

1. The Indian Child Welfare Act appears at 25 U.S.C. §§ 1901-1963. [↑](#footnote-ref-1)
2. 25 U.S.C. §§ 1915(b)(i)-(iv). [↑](#footnote-ref-2)
3. 25 U.S.C. § 1915(e). [↑](#footnote-ref-3)
4. *Id*. [↑](#footnote-ref-4)
5. *Letter,* attached and filed herewith as Exhibit 1. [↑](#footnote-ref-5)
6. 25 U.S.C. § 1902. [↑](#footnote-ref-6)