

# Indian Child Welfare Act (ICWA)

*and disparities in child welfare cases*



## **Pima County ICWA Court**

**Hon. Janet Bostwick & Hon. Kathleen Quigley**

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# INDIAN BOARDING SCHOOLS ONE IMPETUS FOR ICWA



# Students at Carlisle Boarding School...



**Boarding schools' intent was to “assimilate” into American culture:**

**STRIP** away Indian identity - **SEPARATE** from tribe and family

**PUNISH** the speaking of native language – Change names

**ALLOW NO** traditional or cultural practices (clothing, hair, etc.)



PHOTOGRAPH BY U.S. ARMY SIGNAL CORPS,  
COURTESY OF THE ARIZONA HISTORICAL FOUNDATION



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# “Appropriate” skills

Divided by gender and taught “appropriate” skills



# The institution as “family”



# Boarding School--Mortality

215 GRAVES FOUND  
AT KAMLOOPS  
RESIDENTIAL  
SCHOOL



**May 2022:** more than **500** child deaths identified after examining records for more than **400** boarding schools in US; child death estimates from researchers are in the **tens of thousands**

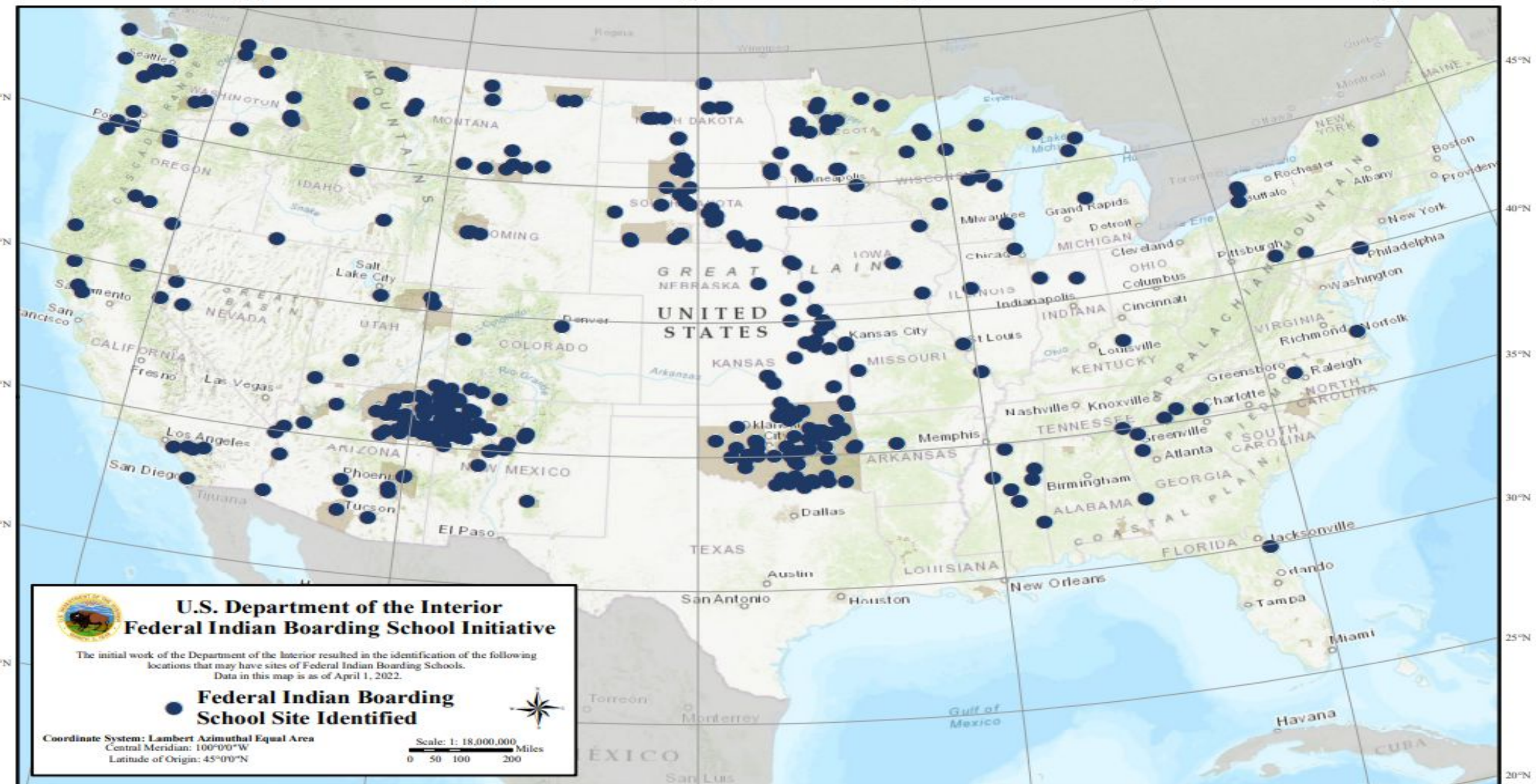
# Federal Indian Boarding School Sites

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120°W 110°W 100°W 90°W 80°W 70°W





# Phoenix Indian School

1891-1990

Arizona had 47 Indian boarding schools  
(second-highest in country)

(prayers photo 1900)



# DISPARITIES in foster care impetus for ICWA in 1978

“wholesale removal of Indian children”

Indian Adoption Project, 1950s-1960s – BIA & Child Welfare League actively placed Indian children in non-Indian homes

## Surveys and Congressional findings:

25% to 35% of all Native children removed to foster or adoptive homes at some point in lives (1969 & 1974 data)

85% of Indian foster children were in *non*-Native homes; of those adopted, 90% were to *non*-Native homes (1969)

State pressure on parents to give up rights; no due process; no consideration of cultural differences.



# The Indian Child Welfare Act of 1978

25 U.S.C. § 1901- 1963





# Congressional Goals for ICWA

**To protect Indian children's interests**

**To promote stability and security of Indian tribes and families by establishing minimum federal standards for removal and placement of Indian children**

**To promote the placement of Indian children who are removed from their families in foster or adoptive homes which reflect the unique values of Indian culture.**

(ICWA adds federal standards to state law, but does not replace state law except where inconsistent with ICWA)

# Who is an Indian child...?



- **“Indian child”** is unmarried, under age 18, and is either (1) a member of federally recognized tribe or (2) eligible for membership and is a biological child of a tribal member
- Tribe decides whether a child is eligible for membership
  - ***Tribe has the last word!***
- ICWA applies if **“reason to know”** child is an “Indian child” (ICWA case unless/until determination that not an Indian child)

# Core ICWA Provisions

**NOTICE** : By registered/certified mail  
Tribe can **INTERVENE** as party in case

“**IMMINENT HARM**” showing that removal  
from home was necessary to prevent  
imminent physical damage or harm to child

“**ACTIVE**” **EFFORTS** to avoid removal & reunify  
family (to provide remedial services and rehabilitative  
programs to prevent the breakup of the Indian family)

**PLACEMENT PREFERENCES** to keep child  
connected with culture/family/tribe

That **CONTINUED CUSTODY** with parent  
likely to result in serious emotional or physical  
damage to child, *beyond a reasonable doubt*

**QUALIFIED EXPERT WITNESS** familiar with  
tribal culture & traditions must testify for foster  
care, termination of rights, or guardianship

# ICWA Termination of Parental Rights or Guardianship Requirements

**Notice** of motion for termination/guardianship to parent, BIA, Tribe

**Qualified expert witness testimony** supporting findings that:

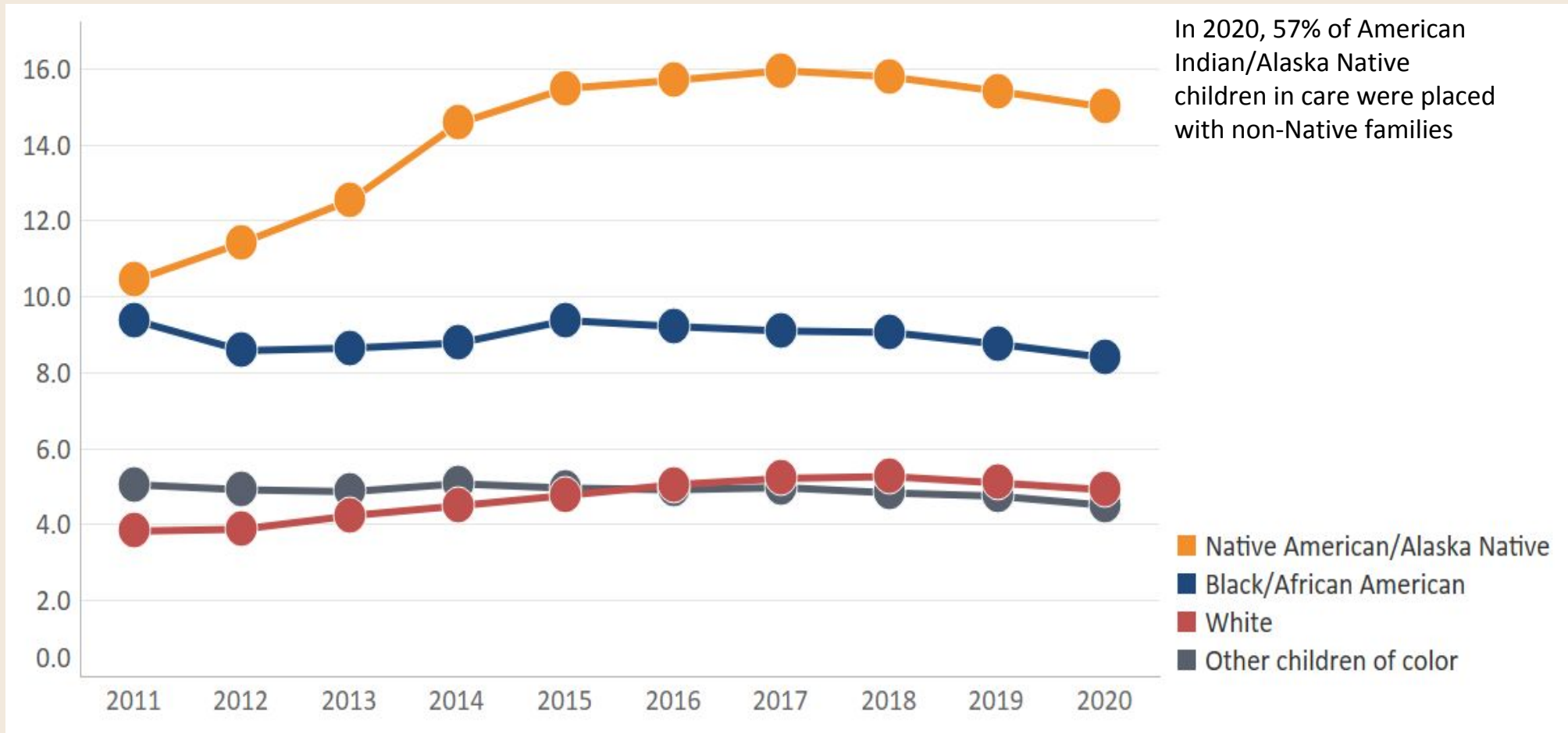
**Active efforts** were made to prevent breakup of Indian family

**Placement** complies with ICWA preferences or good cause to deviate from ICWA placement preferences is shown

*Beyond a reasonable doubt* that **continued custody** by parent likely to result in serious emotional or physical damage to child

# Despite ICWA, foster care disparity continues – overrepresented at 2.7 times the general population

American Indian Alaska Native children in care (# per 1,000 children)  
-Casey Family Program





# DISPROPORTIONALITY IN ARIZONA FOSTER CARE

- 22 federally recognized tribes
- AZ is +/- 5% American Indian/Alaska Native  
(2022)  
[U.S. Census Bureau QuickFacts: Arizona](#)
- AZ foster care disproportionality rate = 1.5



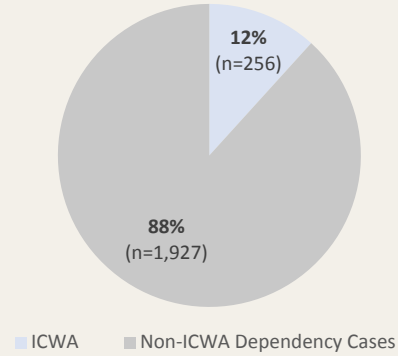


# INDIAN CHILD WELFARE ACT (ICWA) DATA SNAPSHOT

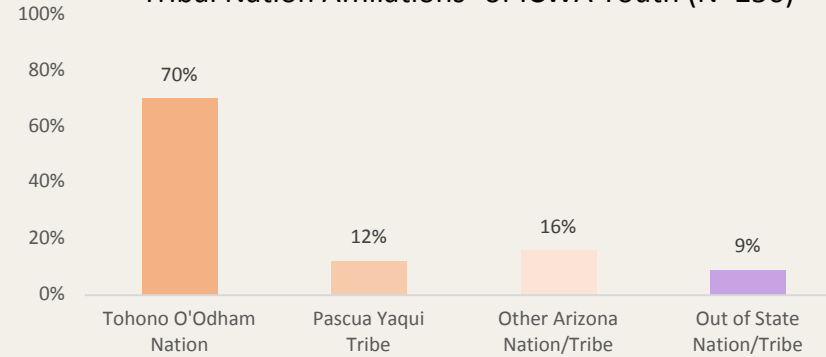
## Pima County Juvenile Court

There are currently **256** active ICWA youth (determined "ICWA applies" or "Reason to Know").  
Of these cases, **191 (75%)** of ICWA-applicable youth currently have a tribe as an intervening party<sup>1</sup> (intervention granted by judge).

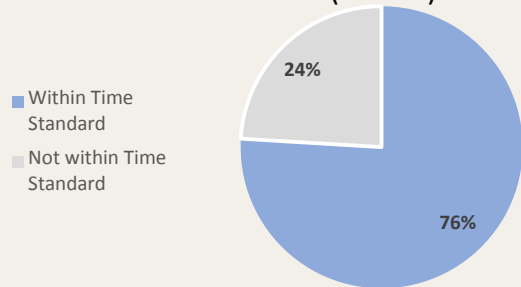
### Population of Active Pima County Dependency Cases (N=2,183)



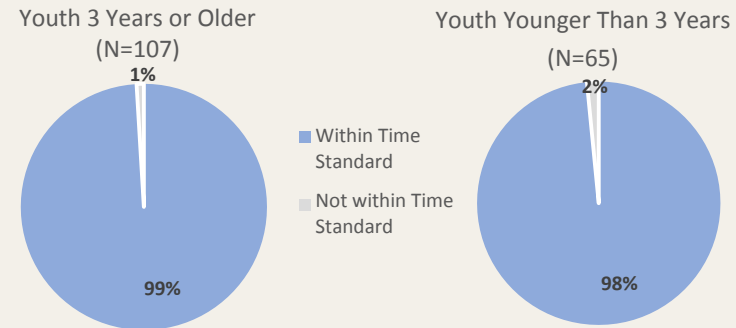
### Tribal Nation Affiliations<sup>2</sup> of ICWA Youth (N=256)



### Compliance with Dependency Adjudication Time Standard<sup>3</sup> for ICWA Youth (N=204)



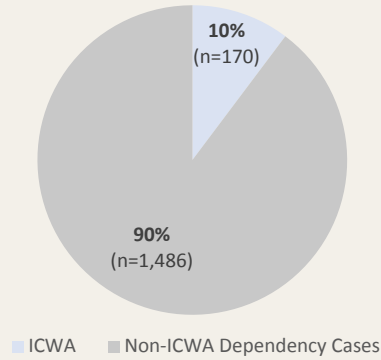
### Compliance with Permanency Hearing Time Standards<sup>4</sup> for ICWA Youth



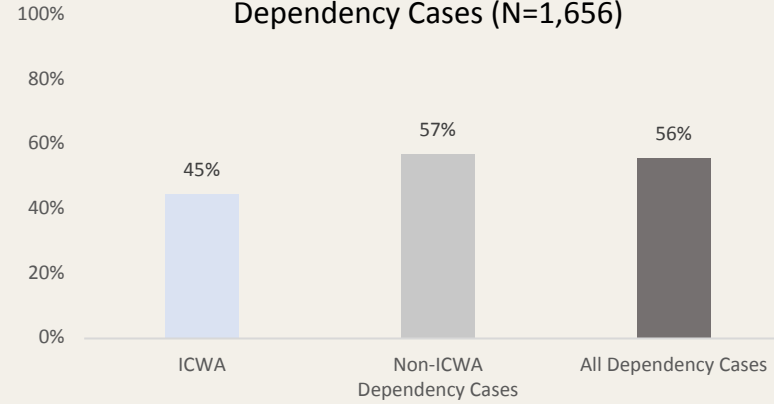
# INDIAN CHILD WELFARE ACT (ICWA) DATA SNAPSHOT

## Pima County Juvenile Court

Population of Closed Pima County Dependency Cases (N=1,656)



Reunification Rates of Closed Pima County Dependency Cases (N=1,656)



Case Closure Outcome	ICWA	Non-ICWA
Post-Adjudication Reunification <sup>5</sup>	39%	44%
Guardianship	23%	8%
Adoption	22%	24%
Turned 18	7%	9%
Pre-Adjudication Reunification <sup>6</sup>	6%	13%
ICWA/Transferred to Tribe	1%	0%
All Other Case Outcomes	2%	0%

<sup>1</sup>An Intervening Party is one that has joined the case based on an approved Motion to Intervene. Additionally, Arizona law permits participation by non-parties, who can and do actively participate in the case on behalf of the Tribe or Nation. Their participation is not reflected in the intervention rate.

<sup>2</sup>A child can be affiliated with more than one tribal nation.

<sup>3</sup>The Arizona Administrative Office of the Courts (AOC) requires 98% of youth to have an adjudication ("First Finding") for at least one parent completed within 100 days of the filing date.

<sup>4</sup>The AOC requires that 98% of children under 3 years of age have their Permanency Hearing within 180 days of removal from home, and 98% of all other youth within 365 days of removal.

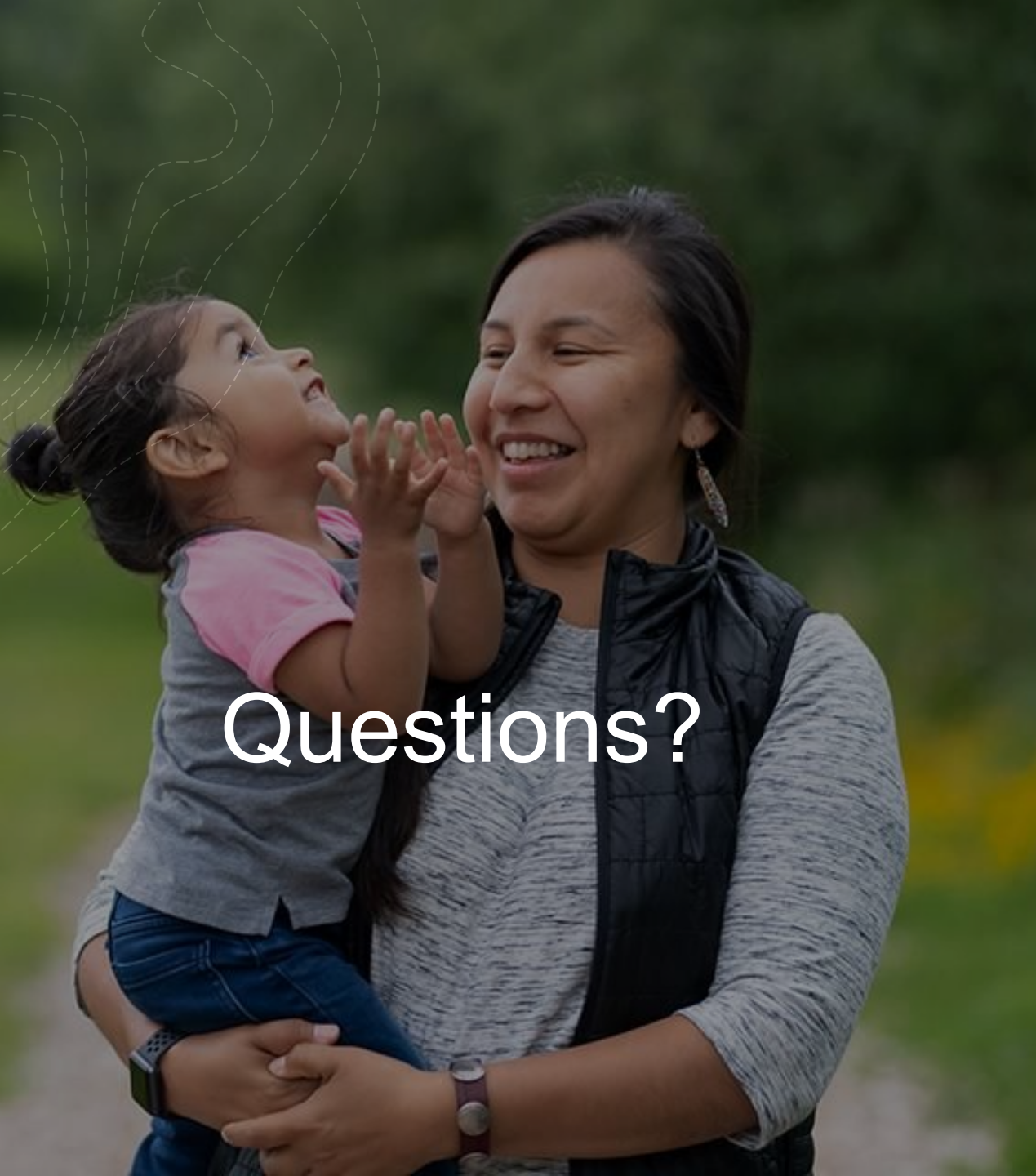
<sup>5</sup>Post-Adjudication Reunification is the rate of all cases Terminated-Placed/Returned to Family divided by cases closed.

<sup>6</sup>Pre-Adjudication Reunification is the rate of all cases Dismissed-Placed/Returned to Family, Dismissed-No Dependency Found, and Dismissed-Petition Withdrawn divided by cases closed.

# ICWA TODAY

- **GOLD STANDARD** of child welfare work
- *Brackeen v. Haaland*, US Supreme Court, 2023, upheld ICWA (no standing on equal protection)
- States passing state ICWA laws/adding state ICWA rules
- 22 ICWA Courts in U.S., two in Arizona (Pima & Maricopa County)





Questions?

