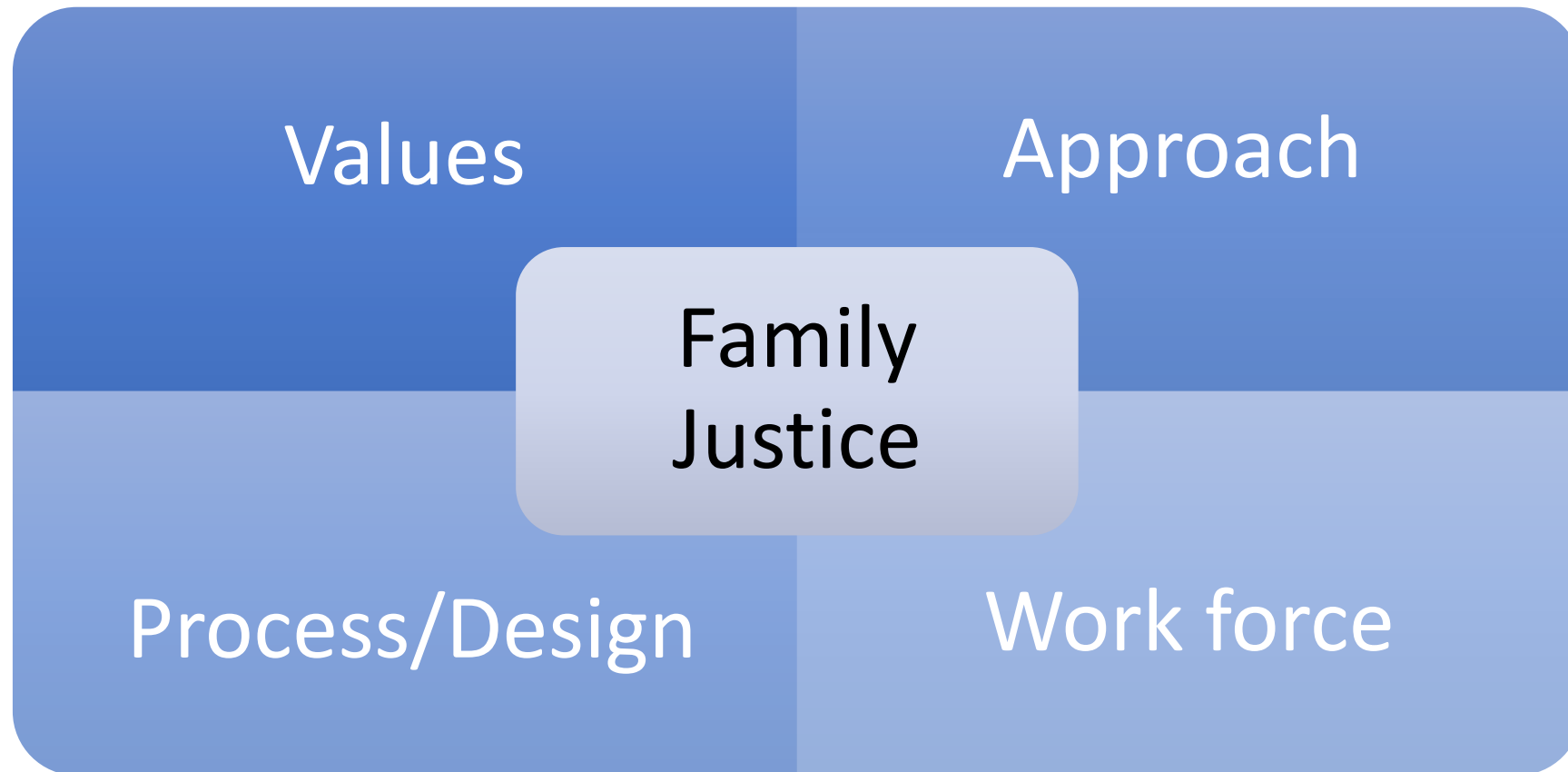




# Where do we go from here? ICWA after *Haaland v.* *Brackeen*

Sheldon Spotted Elk, JD

# Culturally Relevant Design

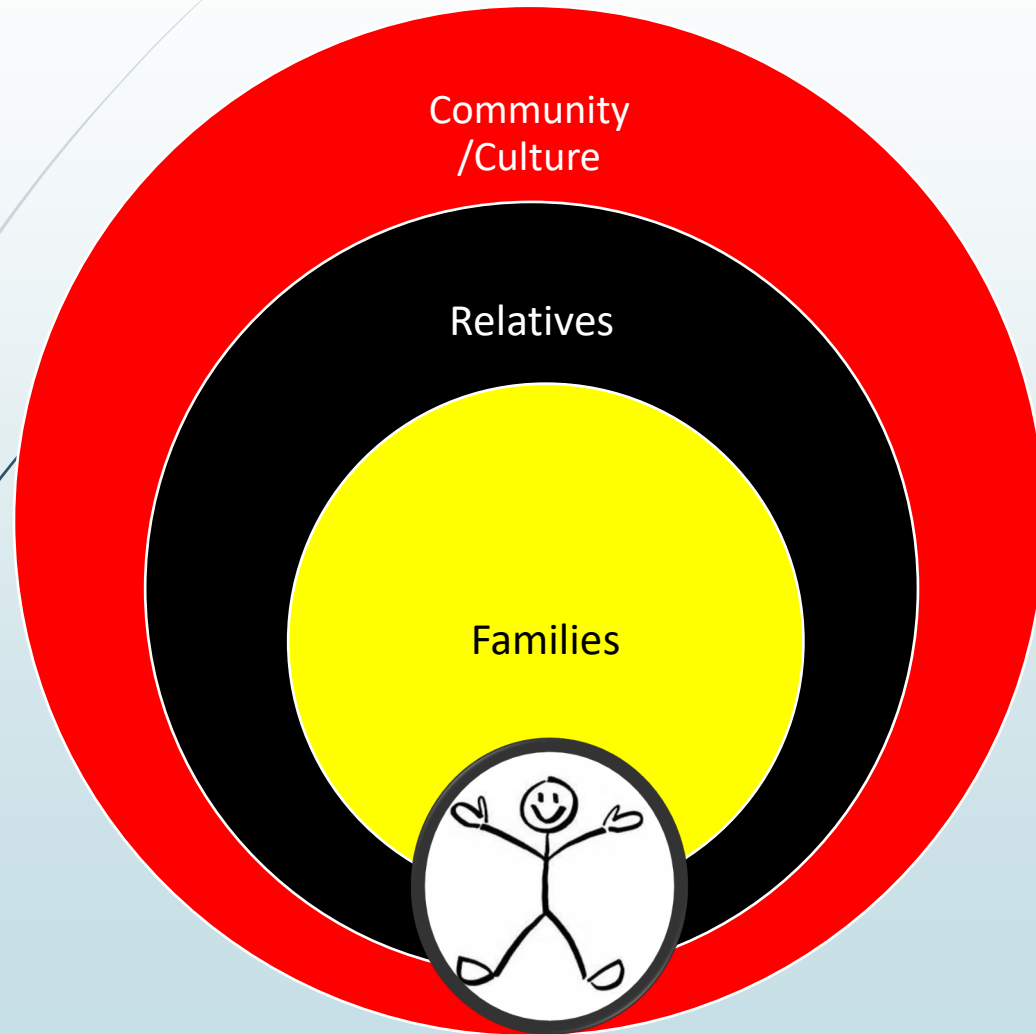


An illustration on a dark brown background. In the top left, a sign with a blue border contains the text 'EVERY CHILD MATTERS' in black, hand-drawn letters. Below the sign, a woman with dark hair, wearing a white shirt and a blue and red patterned scarf, holds a young child. The child is wearing a brown hat and a white shirt with yellow and red floral patterns. To the right, a wooden staff with a bundle of items hanging from it is visible. In the bottom left, there are some abstract, swirling lines. The overall style is that of a hand-drawn poster or mural.

## Thought Exercise:

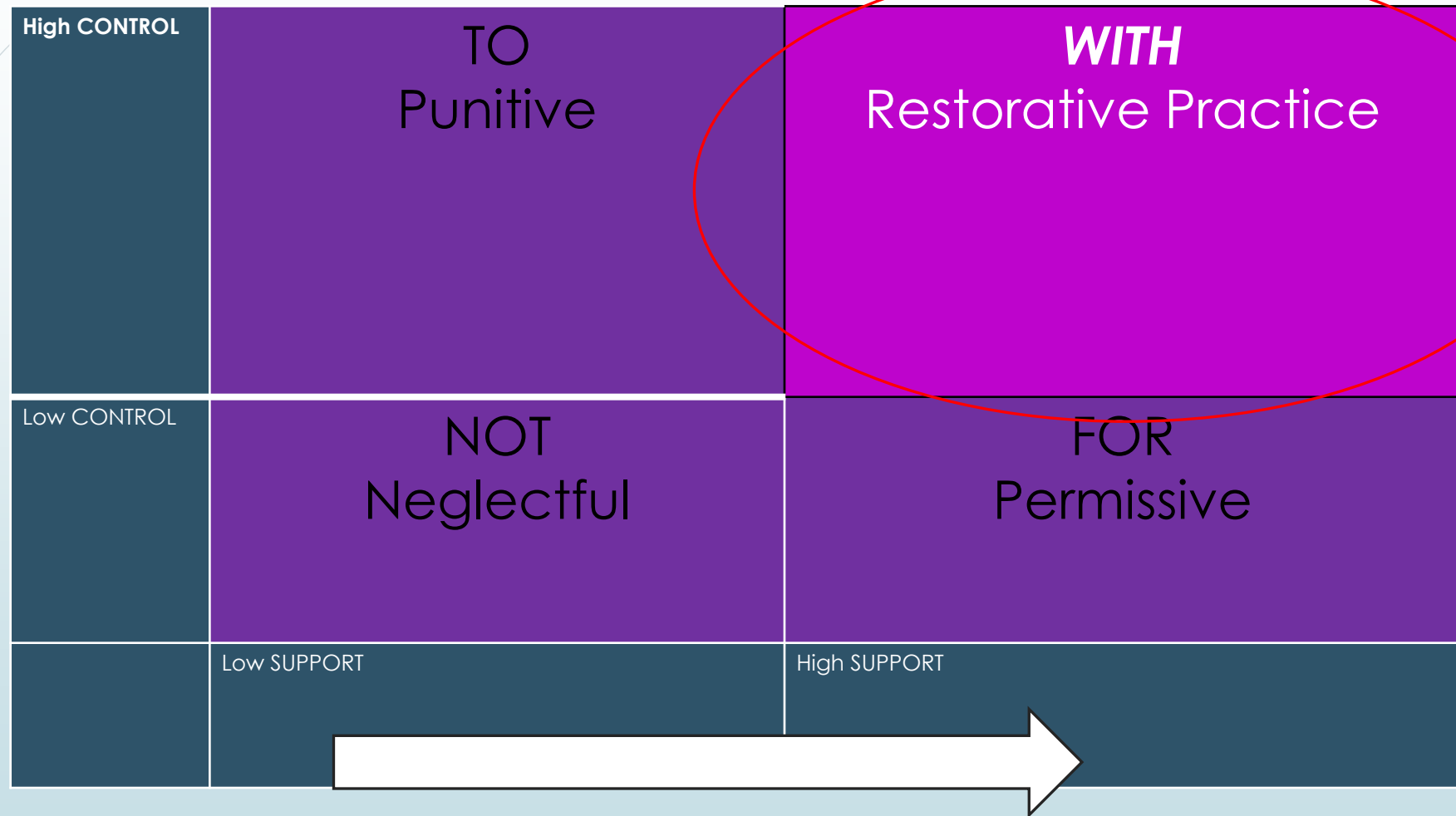
- ▶ What does family wellbeing mean in your Tribe?
- ▶ What are the Tribal values that we show up with for families when they are struggling or failing?

# Gold standard of child welfare



**Active efforts** to keep children safely with their families or to reunify them with their families. **Placement Preferences** to keep them connected to identity and culture. All within a community context (**Transfer**).

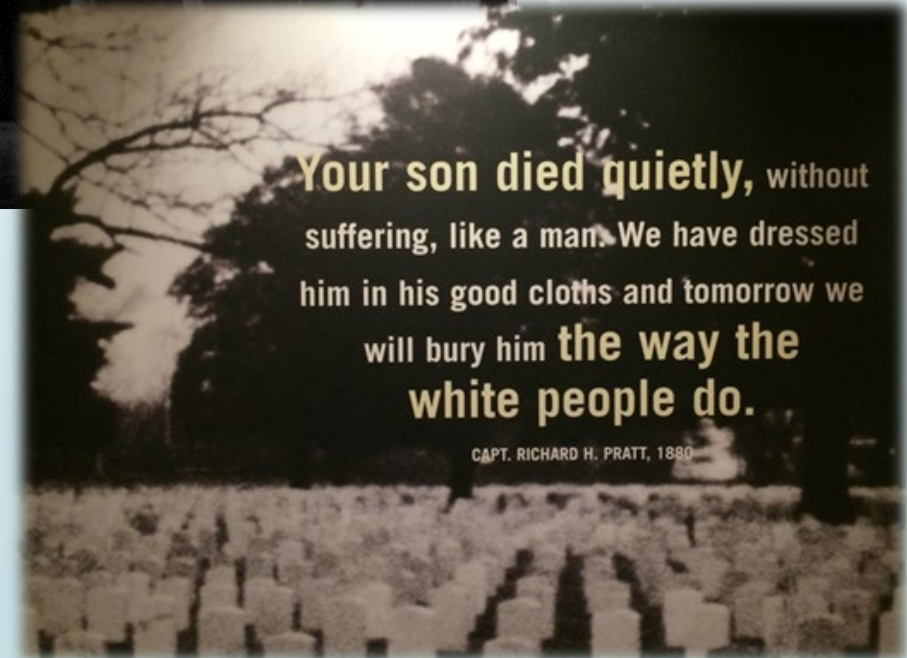
# Restorative Justice social discipline window





# Attack on the Indian Family

- ▶ Indian Civilization Act of 1819
- ▶ Treaty relationship connected to Indian families
  - ▶ (see: Indian Children and the Federal Trust Relationship, Fletcher & Singel)
- ▶ Indian Boarding Schools (523)
- ▶ Termination Era (1950s)
- ▶ Indian Adoption Project



**Your son died quietly,** without suffering, like a man. We have dressed him in his good cloths and tomorrow we will bury him **the way the white people do.**

CAPT. RICHARD H. PRATT, 1880

# ICWA Legal Responsibilities

- Identification of “*Indian Child(ren)*”
- Proper exercise of jurisdiction
- Proper notice of proceedings
- “*Active efforts*” to preserve the family
- Use of QEW & proper standard of review
- Placement preferences
- Transfer to Tribal Court(s)



# “Kill the Indian, Save the Man”

Prisoners sent to Ft. Marion, St. Augustine, Florida. They were arrested near Ft. Reno for attacking white wagon trains, in 1875. Roman Nose is in this picture.



Dickinson College Archives and Special Collections

Almost 7,800 children attended **Carlisle Indian Industrial School**, where assimilation was a founding principle: Upon entry, children were renamed and stripped of their tribal clothing and hairstyles. In promotional materials, the school disseminated before-and-after portraits of students.







# What does *Haaland v. Brackeen* hold?

## Summary

In this 7-2 opinion (Alito and Thomas dissent) the Supreme Court **rejected all the challengers' arguments**, and:

- ICWA is deemed consistent with Congress' Constitutional Authority under Article 1.
- Claims that ICWA's active efforts requirement (§ 1912(d)) and placement preferences (§ 1915) violated the principles of anti-commandeering are rejected on the merits.
- No party before the Court had standing to raise equal protection challenges to ICWA's placement preferences (§ 1915)

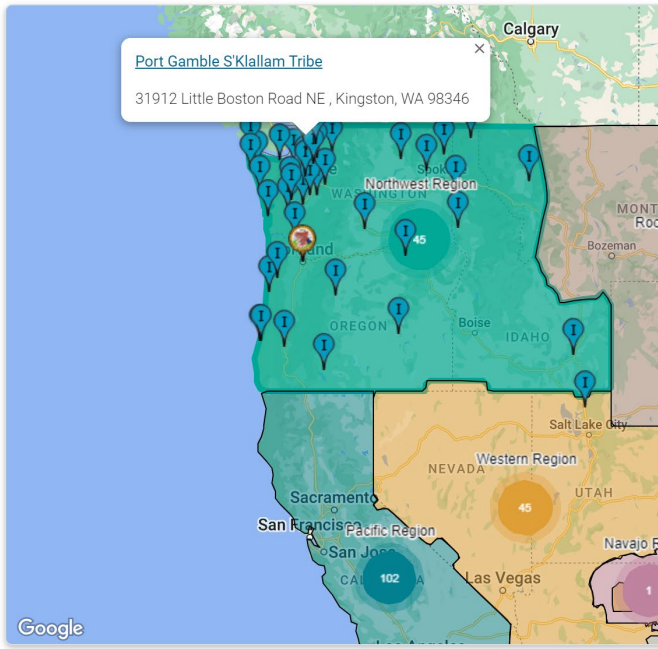
# Tribal ICWA Rights: Indian Child, Notice, Intervention

Showing 45 ICWA Tribe Representatives and 1 Regional Social Service Office.

**Port Gamble S'Klallam Tribe**  
31912 Little Boston Road NE, Kingston, WA, 98346  
**Cheryl Miller, Children and Family Services Director**  
Phone: (360) 297-9665 (360) 689-7958  
Email: [cmiller@pgst.nsn.us](mailto:cmiller@pgst.nsn.us)  
[Show on map](#) [More info](#)

**Puyallup Tribe of the Puyallup Reservation**  
3009 E. Portland Avenue, Tacoma, WA, 98404  
**Marriah Betschart, ICW Director**  
Phone: (253) 442-5368 (253) 680-5756  
Email: [marriah.e.betschart@puyalluptribe-nsn.gov](mailto:marriah.e.betschart@puyalluptribe-nsn.gov)  
[puyalluptribe.cpsintake@puyalluptribe-nsn.gov](mailto:puyalluptribe.cpsintake@puyalluptribe-nsn.gov)  
[Show on map](#) [More info](#)

**Quileute Tribe of the Quileute Reservation**  
PO Box 69, LaPush, WA, 98350



**Disclaimer:** Indian Affairs annually publishes in the Federal Register a list of Tribally designated agents for service of notice of Indian Child Welfare Act (ICWA) proceedings. To provide the Bureau of Indian Affairs (BIA) has developed this electronic interactive directory of ICWA designated agents. This directory's information is the most currently available at the time of its publication in between the BIA's annual Federal Register publication. BIA will update the directory information quarterly (every 3 months). To submit an update for the ICWA designated agents to the BIA Regional Social Worker in your area. To learn more about the Directory contact the BIA Division of Human Services at (202) 513-7622. To access the most recent Federal Register Notice track all changes to the Tribal designated agent list in real time nor guarantees the accuracy of the directory's designated agent contact information. Nothing in this directory authorizes

## Considerations:

- Who is an “**Indian child**” for your Tribe? How is “membership” defined?
- BIA Notice Agent update
- **Urgency**: How fast can “Indian child” determination be made?
  - *(I.e. Opening the certified mail by notice agent, communication with enrollment for verification)*

<https://www.bia.gov/bia/ois/dhs/icwa/agents-listing/>

# How are decisions made about **transfer - intervening – monitoring?**

- **Possible considerations:**

- \* Tribal service array? (e.g. autism services/support or residential treatment)

- \* Family Finding?

*(i.e. Placement Preferences only 30% of Tribal codes specify)*

- \* Distance from Tribe?

- \* Resources?

Tribal Child Welfare Codes as Sovereignty in Action. 2016 NICWA conference edition

**Tribal Child Welfare Codes as Sovereignty in Action:**

▶▶▶ A GUIDE FOR TRIBAL LEADERS

This version of the document was prepared for the 2016 NICWA annual conference.



# Tribal Child Dependency Types of Jurisdiction

	Child Protection Services (CPS)	Court Adjudication	Case Management
574 Tribal Nations	TRIBAL CPS/ Tribal Police (P.L. 638)	Tribal Courts (~ 400 Tribal Courts)	Tribal Social Services/Family Services
State Government	State CPS / State Police (P.L. 280) (e.g. Tribal-State MOUs, sec. 1919, Title IV-E “pass-thru”)	State Courts ( <i>ICWA cases</i> )	State DCFS ( <i>ICWA Cases</i> ) Co-manage with Tribal worker
Federal Government	BIA Social Services/BIA Police Enforcement	CFR Courts (Southern Plains (6 tribes), Western Region (2 Tribes), Eastern Oklahoma (5 Tribes)) <b>~15 Tribes</b>	BIA Social Services



## ICWA Rights Considerations:

- § 1919 agreements (Or IGA/MOU/MOA)
- Legal Representation? Social Work?
- QEW Pushback on Active Efforts finding
- Family Finding?
- Safety Planning (Assessing: Safety Threat (evidence); Vulnerability; & Protective Factors)

# Legal Process

*Avoid unnecessary removal, overly long stays in foster care, and trauma to families.*

**Safety Planning:** Other options  
*Protective Supervised Services*

**Gold standard representation:**  
Cultural humility, motivation interviewing

Shelter  
Hearing

Adjudication

Disposition

Review  
Hearing

Reunification

**Active Efforts** to  
prevent removal and  
**Placement Preferences**

**Qualified Expert Witness:** 1)  
serious physical and emotional  
damage to the child; 2) cultural  
context of child rearing.

**Active Efforts** to finalize a  
permanency plan (*concurrent  
planning*)

