

# Indian Child Welfare Act

In a June 2013 child custody case that one justice called “heartbreaking,” the U.S. Supreme Court ruled that 3-year-old Veronica, a native American Indian girl, should not have been taken away from her adoptive parents, Matt and Melanie Capobianco. Baby Veronica had lived with the Capobiancos in South Carolina for nearly two years when her biological father, Dusten Brown, a member of the Cherokee Nation, sued for custody and won by invoking the Indian Child Welfare Act (ICWA).<sup>1</sup>

According to the American Bar Association (ABA), the ICWA was enacted in 1978 to curtail the high rate at which Indian children were removed from their traditional homes and essentially from Indian culture as a whole. “Before 1978,” the ABA reported, “as many as 25 to 35 percent of the Indian children in certain states were removed from their homes and placed in non-Indian homes, by state courts, welfare agencies, or private adoption agencies.”<sup>2</sup> Although Brown had previously renounced his parental rights via a text message, Brown stated that he had changed his mind and believed that Veronica would be better served living with other native American Indians. Immediately after winning his case in South Carolina, Mr. Brown took custody of 27-month-old Veronica and moved to Bartlesville, Oklahoma, a city neighboring the Tahlequah-based Cherokee Nation. According to Melanie Capobianco, she and her husband Matt were devastated but vowed to regain legal custody by appealing to the U.S. Supreme Court. After the Supreme Court decided in favor of the Capobiancos, the Supreme Court of South Carolina ordered a family court to finalize Veronica’s adoption. The justices noted that they have “consistently found that the biological father’s parental rights had been terminated” and that he [Mr. Brown] “had no standing to contest the adoption proceedings.”

In reaction, several Indian groups are planning to file a federal lawsuit to “protect Veronica’s interests” and called the case “an alarming failure of the judicial system.”<sup>3</sup> The Capobiancos, on the other hand, say that this decision will prevent the “tragic disruption of other adoptions.” They also note that according to court papers filed by Mr. Brown, Baby Veronica is only “1.2 percent (3/256) Cherokee Indian.”<sup>4</sup>

This case has brought national attention to the rights of native American Indians, the rights of adoptive parents, and ultimately to the rights of children to be brought up in the best of all possible conditions: financially, culturally, educationally, and emotionally.

## STUDY QUESTIONS

1. Should Veronica be returned to her adoptive parents or remain with her biological father?
2. What criteria should be used for determining custody in disputes between adoptive parents and biological parents? What agency, person, or persons should have the authority to make that final decision?

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<sup>1</sup> <http://www.reuters.com/article/2013/06/25/us-usa-court-custody-idUSBRE9501A020130625>

<sup>2</sup> [http://www.americanbar.org/content/newsletter/publications/gp\\_solo\\_magazine\\_home/gp\\_solo\\_magazine\\_index/indianchildwelfareact.html](http://www.americanbar.org/content/newsletter/publications/gp_solo_magazine_home/gp_solo_magazine_index/indianchildwelfareact.html)

<sup>3</sup> <http://abcnews.go.com/US/wireStory/sc-denies-requests-rehear-adoption-case-19766137>

<sup>4</sup> <http://www.thedailybeast.com/articles/2013/06/26/close-call-for-indian-rights-in-baby-girl-ruling.html>

