Since the second edition of this Indian Child Welfare Act (ICWA) handbook was published, there have been some significant legal developments—arguably the most important developments since the law was enacted 40 years ago. In 2016, the Department of the Interior issued ICWA regulations for the first time. Although it had issued nonbinding guidelines in 1979, this is the first time that regulations have been issued pursuant to the Administrative Procedures Act. Under the *Chevron* doctrine, deference is provided to such regulations if the delegated agency’s interpretation is based upon a permissible construction of the statute. As a result, we have incorporated the provisions of those regulations in our discussions of the various procedural and substantive requirements of the ICWA. The Department of Health and Human Services has also issued amendments to the Adoption and Foster Care Analysis Reporting System, a data system administered by states and tribes that operate the Title IV-E Foster Care and Adoption Assistance Program, which will require the reporting of certain information related to the requirements in the ICWA. Thus, data measuring various aspects of the well-being of Indian children and families (as defined by the ICWA) will soon be more broadly available. In addition, on the international level, the rights of indigenous peoples have been recognized for the first time through the approval of the United Nations Declaration on the Rights of Indigenous Peoples, as well as the approval by the Organization of American States of the American Declaration on the Rights of Indigenous Peoples, both of which include provisions relating to Native children.
During the ten years since the second edition was printed, there have also been hundreds of new cases decided, including only the second US Supreme Court case interpreting the ICWA, as well as new state versions of the ICWA that expand upon some of the protections of the federal law. The ramifications of the Supreme Court case are still unclear almost five years later, although we know that some dicta in the case and a concurring opinion by Justice Thomas have given rise to a new round of cases challenging the constitutionality of various aspects of the ICWA. Thus far, those claims have not been successful and we have written this book presuming that this will continue to be the case although there are cases still pending that will need to be monitored.

On the funding side, Congress enacted legislation making tribes directly eligible for funding under the Title IV-E Social Security Act and also mandating that states negotiate Title IV-E agreements in good faith for those tribes that prefer to access this funding through the state. Tribes are increasingly accessing these funds, although tribal programs continue to be largely underfunded compared to the states (whose child welfare programs are also often underresourced). We believe that tribal involvement in ICWA cases is essential for the Act to be properly implemented and that the tribe is a valuable resource that can play a vital role in protecting Indian children and families, even as it protects the tribe’s interest in preserving the integrity of the tribal community.

Finally, on the implementation side, we still see serious shortcomings in terms of the implementation of the Act. Although there has been progress from the removal rates that existed prior to the enactment of the ICWA (as well as the 90 percent placement of children in non-Native homes that was occurring prior to 1978), the removal rate for Indian children is still three times that of non-Native children and a majority of children who are removed are still placed in non-Native homes. One positive development in the larger child welfare system has been an increased emphasis
on placing children with relatives, including federal subsidies for relative guardianships. This is consistent with what the ICWA has always prioritized. Indeed, national child welfare organizations, including Casey Family Programs (where one of the co-authors is currently employed), have called the ICWA the gold standard of child welfare that should be applied to all children. This is because the ICWA prioritizes keeping children with a parent or parents whenever possible, provides a preference with placing children with relatives when they cannot safely stay with a parent, and also emphasizes continuing contact between that child and the child’s culture and community regardless of whether the child stays with his or her parents or a relative can be located.

We urge that the ICWA be applied with that spirit and vision and with a sense of cultural humility. If that is done, we believe that not only will compliance with the ICWA improve, but most importantly, the well-being of Indian children and families will be better protected and maximized. We hope that the information in this book will be a tool for those seeking these vitally important outcomes.