In re C.L., --- Cal Rptr. 3d ---, 2023 WL 6780405 (Ct. App. 3d Dist., Oct. 13, 2023).

- **Holding**: Continuing a line of split decisions from the California courts of appeal, the third district court of appeals concludes that duty to inquire of extended family members whether a child in the custody of a county department of public social services in advance of a detention hearing is or may be an "Indian child" applies regardless of whether the child was removed via warrant or via warrantless removal.
- **Summary**: Minor C.L. was removed from his parents through a protective custody warrant under California Welfare and Institutions Code § 340. On appeal, the father contended that the County Department of Social Services failed to comply with the initial inquiry requirements of California law implementing the Indian Child Welfare Act of 1978 (25 U.S.C. § 1901 et seq.; ICWA) because the department did not inquire of extended family members as to the minor's Indian ancestry when he was removed.

  The court of appeals began its analysis by looking to California Welfare and Institutions Code § 224.2(b), which provides in part as follows:

  > "(b) If a child is placed into the temporary custody of a county welfare department pursuant to Section 306[4] or county probation department pursuant to Section 307, the county welfare department or county probation department has a duty to inquire whether that child is an Indian child. Inquiry includes, but is not limited to, asking the child, parents, legal guardian, Indian custodian, extended family members, others who have an interest in the child, and the party reporting child abuse or neglect, whether the child is, or may be, an Indian child and where the child, the parents, or Indian custodian is domiciled.

  The court reviewed prior holdings from California appeal courts, including *In re Robert F.* (2023) 90 Cal.App.5th 492, review granted July 26, 2023, S279743, noting that placing a child into 'temporary custody of a county welfare department pursuant to [section] 306' is fundamentally different from taking a child into 'protective custody' under section 340, and concluding that under the plain language of § 224.2, the duty to inquire of "extended members" is triggered only if the children are taken into temporary custody under section 306, and not triggered when the children are taken into protective custody with a warrant pursuant to section 340. The court declined to follow the *Robert F*. decision, finding that its "interpretation is overly literal and narrow," and instead adopted the reasoning of the Fourth District Court of Appeals in *In re Delila D*. (2023) 93 Cal.App.5th 953, which concluded that section 224.2(b) does not state that the duty to inquire of extended family members applies "only if" a child is taken into temporary custody under section 306, and interpreting the section broadly to apply "regardless of how a child is initially removed from home," given its remedial purpose.

  Here, the court emphasized that the "lack of practical difference" between children taken by warrant and those taken without a warrant "is demonstrated by the legislative history of section 340, subdivisions (b) and (c), which indicated the Legislature's "intention that children taken into custody through warrant be treated the same as those taken into custody without a warrant." The court also concluded that federal guidelines "recommend initial inquiry of extended family members in emergency situations," and "disagree[d] with *Robert F.*'s conclusion … that those emergency situations do not

include situations in which a child is removed through a protective custody warrant," in part because the Legislature used the term "emergency removal" broadly to include orders detaining a child at a detention hearing, and in part because the "BIA explained that these emergency proceedings are those that 'occur without the full suite of protections in ICWA,'" and citing in support a Virginia statute providing for ex parte emergency removal through sworn testimony before a judge. The court also found little to distinguish the findings necessary to support a warrantless removal from removal pursuant to a warrant, since the latter "requires probable cause that there are no 'reasonable means to protect the child's safety or physical health without removal.'" In short, both warrantless removal and removals pursuant to warrant are "emergency situations warranting an expanded initial inquiry under the BIA guidelines."

In addition to the lack of initial inquiry by the Department, the court concluded that the duty of further inquiry was triggered when, at the detention hearing, the father alleged that his great-grandmother was a full-blooded Cherokee. Despite the father's statement, the juvenile court found no reason to believe or know that the minor is an Indian child and concluded ICWA did not apply. The court of appeals concluded that "'[T]he majority view is that a report of possible Indian ancestry, such as in this case, is sufficient to trigger the duty of further inquiry.'" (quoting *In re E.C.* (2022) 85 Cal.App.5th 123, 147.).

- **Relevant (2023) Deskbook Section**: 13:18
- **Comment**: The California Supreme Court has granted review in two cases addressing the duty of initial inquiry when children are removed pursuant to a protective warrant.