NOT YET SCHEDULED FOR ORAL ARGUMENT

United States Court of Appeals for the District of Columbia Circuit

Case No. 15-5118

MACKINAC TRIBE,

Plaintiff-Appellant,

v.

SALLY JEWELL, U.S. SECRETARY OF THE INTERIOR,

Defendant-Appellee.

On Appeal from the United States District Court for the District of Columbia
Case No. 1:14-CV-0456 (Hon. Ketanji Brown Jackson)

REPLY BRIEF FOR APPELLANT

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November 12, 2015

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SUMMARY OF ARGUMENT

The Secretary admits that a federally recognized tribe has a right to reorganize under the Indian Reorganization Act (IRA),[1] and that the statute permits such a tribe to enforce that right in federal Court.[2] In her brief, the Secretary argues that the Mackinac are not a federally recognized tribe. The Secretary's conclusion is not premised upon the IRA's "detailed and unyielding" statutory terms defining "tribe," but rather whether the Mackinac appear on the list promulgated pursuant to the Secretary's list authorized by an entirely different statute; *i.e.* the Federally Recognized Indian Tribe List Act of 1994 (Tribal List Act),[3] and that her list is definitive when it might conflict with the IRA definition of Indian tribe.

The Secretary's opposing brief reflects continuing resistance to the United States Supreme Court's decision in *Carcieri v. Salazar*, 555 U.S. 379 (2009), and seriously misconstrues the holding in that case: *i.e.* the Secretary is obligated to follow the "detailed and unyielding" provisions of the IRA. The Mackinac are eligible for reorganization under the IRA because 1) they are "recognized" within the meaning of the IRA by virtue of their 1855 Treaty, and 2) their status was never terminated by Congress, which has the exclusive power to terminate Indian tribes.

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1 25 USCA § 476(a)

2 25 USCA § 476(d)

3 25 USCA §479a-1; P.L. 103-454; 108 Stat. 4791]

Moreover, the Secretary wrongly argues that the Tribal List Act impliedly amends the IRA to make the Secretary's process of federal acknowledgment the exclusive process for federal recognition of an Indian tribe, which inappropriately usurps Congress' plenary power over Indian affairs grounded in the U.S. Constitution, and violates the stated finding of Congress contained in the Tribal List Act, which confirms Congress' authority to recognize Indian tribes, and the Court's authority to determine whether Congress has done so.[4]

And finally, the Secretary ignores the 1855 Treaty and its aftermath. The Secretary admits the well-established legal principal that merely entering into a treaty with a tribe constitutes recognition. But in this case, the treaty went further by expressly promising continuing recognition with the Mackinac. Specifically, the Treaty promised

> if at any time hereafter, further negotiations with the United States, in reference to any matters contained herein, should become necessary, no general convention of the Indians shall be called; but such as reside in the vicinity of any usual place of payment, or those only who are immediately interested in the questions involved, may arrange all matters between themselves and the United States, without the concurrence of other portions of their people, and as fully and conclusively, and with the same effect in every respect, as if all were represented.5

The Secretary also ignores the well-established fact that the Michigan tribes were illegally terminated, including the Mackinac. In so doing, the Secretary seeks to

4 P.L. 103-454, Title I, §103(3)

5 Art. V, Treaty of July 31, 1855 with the "Ottawa and Chippewa" (11 Stat. 621)

perpetuate an illegal policy that usurps Congressional authority and violates the well-established principle that only Congress can terminate federal recognition of an Indian tribe.

ARGUMENT

1) THE SECRETARY MISCONSTRUES CARCIERI v. SALAZAR

The Secretary concedes that "Any Indian tribe" has a right to reorganize under the Indian Reorganization Act.[25 USCA §476][6] The ultimate question raised by this litigation is whether the Mackinac are an "Indian tribe" within the meaning of Section 19 the Indian Reorganization Act.[25 USCA §479][7] Inquiry into that question was prematurely ended in deference to the Secretary's determination made under a different statute[8] and regulatory process[9] that was clearly outside the IRA.

The leading case on the IRA's definition of "Indian tribe" is *Carcieri v. Salazar*, 555 US 379 (2009). The Secretary argues that the holding in that case provides that "a tribe not only must be 'recognized' at present, but also must have

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6 Appellee Br., at 8, citing *Cal. Valley Miwok Tribe v. United States*, 515 F. 3d 1262 (D.C. Cir. 2008); See also Appellant's Br., at 15 citing COHEN, HANDBOOK OF FEDERAL INDIAN LAW,§ 4.04[3][a] (Ed. 2005); See *Kickapoo Tribe of Oklahoma v. Lujan, 728 F. Supp. 791, 793-794 (D.D.C 1990)*

7 Sec. 19 of the Act of June 18, 1934, ch. 576; 48 Stat. 988

8 Tribal List Act, supra.

9 25 CFR Part 83

been 'under federal jurisdiction' in 1934 (citing 555 US 384, 395-96).[10] The Secretary's argument is not supported by the citations and misconstrues the holding in that case. The Court in *Carcieri* specifically held that the term "tribe" as used in the IRA (§479) is not controlled by the Federal Acknowledgment Process (FAP) established in 25 CFR Part 83.

The Secretary offered various citations to the *Carcieri* opinion[11] 555 US 384, 395-96), but those citations refer to the factual history of the case, not the holding of the case.

Carcieri's holding was clearly articulated by the Court: "We hold that the term 'now under Federal jurisdiction' in §479 unambiguously refers to those tribes that were under the federal jurisdiction of the United States when the IRA was enacted in 1934." 555 US at 397.[12] Nothing in the *Carcieri v. Salazar* opinion supports the notion that a tribe eligible in 1934 to reorganize under the IRA loses its eligibility to reorganize merely because the Secretary does not acknowledge the legal status of the tribe in 2015 as the result of an illegal termination of the tribe, and the Secretary offers no analysis of the *Carcieri* opinion that would support such a conclusion.

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10 Appellee Br., at 31

11 Appellee Br., at 31

12 See also 555 US 382

Specifically, *Carcieri* stated that "the definition of 'tribe' in §479 itself refers to 'any *Indian* tribe' (emphasis added), and therefore is limited by the temporal restrictions that apply to §479 definition of 'Indian.'" 555 US 393. Those "temporal restrictions" require a "look back" to the status of the tribe in 1934. Indeed, the majority expressly "disagree(d) with the argument made by Justice Stevens that the term 'Indians' in §465 has a different meaning than the definition of 'Indian' provided in §479, and that the term's meaning in §465 is controlled by later-enacted regulations governing the Secretary's recognition of tribes like the Narragansetts." 555 US at 393 n8 (emphasis added). The Court clearly held that the term "tribe," as used in the IRA (§479), is **not** controlled by later-enacted FAP regulations (i.e. 25 CFR Part 83)

As previously noted, Justice Breyer's concurring opinion provides additional clarity when he noted the history of wrongful omission of tribes from the Secretary's list and that the IRA "imposes no time limit upon recognition." 555 US 398-399. The Secretary's own Part 81 (IRA implementing) regulations anticipate such errors omitting recognized tribes from the Secretary's list by clarifying that "tribe" for IRA purposes is not limited to tribes on the Secretary's list, but also include tribes "eligible to be included" on the Secretary's list.[13]

13 25 CFR Part 81.1

The specific holding of the Court, as applied to this case, is that this latter developed system of federal acknowledgment does not alter the eligibility of tribes who were eligible to organize in 1934.

2) THE MACKINAC TRIBE IS A RECOGNIZED TRIBE FOR IRA PURPOSES; OMISSION FROM THE SECRETARY'S LIST OF "ACKNOWLEDGED TRIBES" DOES NOT CHANGE THAT.

The gravamen of the Secretary's argument is that "the Tribe's absence from [Interior's] list is dispositive."[14] The Secretary reasons that because she has not "acknowledged" a tribe in a process outside the IRA, *ipsi dixit*, said tribe not a "recognized" tribe within the meaning of the IRA.[15] The argument is wrong because 1) the term "recognized," as used in the IRA differs from the term "acknowledges" as used in the Tribal List Act and the FAP (Part 83) process, 2) the authority cited by the Secretary is clearly not applicable; 3) the Secretary's attempt to distinguish *Noatak* and *Montoya* support Mackinac's argument, and 4) the Secretarial lacks the authority to not recognize a tribe that Congress has recognized.

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14 Appellee's Br., at 29 citing *James v. U.S. Dept. of Health and Human Servs.*, 824 F. 2d 1132 (DC Cir., 1987)

15 Id.

a) The term "recognized," as used in the IRA differs from the term "acknowledges" as used in the Trial List Act and the FAP (Part 83) process.

The Secretary argues that unless she has acknowledged a tribes legal status, it is not recognized. Obviously**,** the word "recognized" as used in the IRA and the word "acknowledged", as used in the Tribal List Act and the FAP (Part 83) regulations, are different words. In this context, the also have different meanings.

Under the IRA's definition of "Indian" and "tribe," an Indian tribe must be "recognized" to be eligible for reorganization. [25 USCA §479] Neither the Tribal List Act nor the FAP (Part 83) process deal with recognition. Rather both deal with "acknowledgment". *See* 25 USCA §479a ("The term "Indian tribe" means any Indian or Alaska Native tribe … that the Secretary of the Interior acknowledges to exist as an Indian tribe." (emphasis added)); See 25 CFR Part 83.1 (*Indian tribe* ... means any Indian ... tribe ... that the Secretary of the Interior presently acknowledges to exist as an Indian tribe." (emphasis added))

In *Stand Up For California! v. U.S. Dept. of Interior,* 919 F. Supp. 2d 51 (D.D.C. 2013), the District Court for the District of Columbia specifically addressed the meaning of "recognition" as used in the IRA. In that case, "the Court conclude[d] that the phrase 'recognized Indian tribe' in the IRA refers to recognition in the cognitive or quasi-anthropological sense." *Id.*, at 70 "Recognized," in the "cognitive' or quasi-anthropological sense, means that federal

officials simply knew or realized that an Indian tribe existed." *See id.* (internal quotation marks omitted) (quoting William W. Quinn, *Federal Acknowledgment of American Indian Tribes; The Historical Development of a Legal Concept, 34 AM. J. LEGAL HIST.*, 331, 333 (1990), favorably cited in *Carcieri*, 555 U.S., at 298 (Breyer, J., concurring). This meaning of "recognized," as used in the IRA, contrasts with the meaning of "recognized" "in a more formal or 'jurisdictional' sense to connote that a tribe is a governmental entity comprised of Indians and that the entity has a unique relationship with the United States." 919 F. Supp. 2d, at 69. Clearly, "acknowledgment" as used in the Tribal List Act and the FAP (Part 83) process has this latter meaning. In *Stand Up For California!*, the Court was **upholding** a decision of the Secretary in which she interpreted the term "recognized" as used in the IRA in this 'cognitive' or quasi-anthropological sense, that is distinguished from acknowledgment as used in the Tribal List Act and the FAP (Part 83) process. The Secretary's position in the case at bar is clearly at odds with her position in *Stand Up For California!*, and the holding of the Court in that case.

The District Court reached a similar conclusion in *City of Sault Ste. Marie v. Andrus*, 532 F. Supp. 157 (D.D.C. 1980) which involved the taking of land into trust under the IRA for the Chippewa Indians of Sault Ste. Marie (Michigan). In that case, the Court upheld the then-Secretary's view that the Sault Ste. Marie

Chippewa was a recognized tribe within the IRA, even though it had not been recognized in 1934, and did not go through "acknowledgment" under the FAP (Part 83). The Sault Ste. Marie had been the subject of "a 1937 Memorandum of the Acting Solicitor to the Commissioner of Indian Affairs, which indicates that the Chippewas should not be recognized for purposes of the IRA because the Chippewas were dissolved officially by a treaty of July 31, 1855, with the United States." 532 F. Supp., at 161. This was reversed by a 1972 Memorandum. *Id*. In considering this history, the Court upheld this policy reversal by noting "To hold otherwise would be to bind the government by its earlier errors or omissions" *Id*., which foreshadowed the comments of Justice Breyer noting the certain tribes were wrongly left off the Secretary's list of tribes promulgated after enactment of the IRA. *Carcieri*, 555 US, at 397-398

These cases from the District Court clearly demonstrate that the term "recognized" as used in the IRA differs from the term "acknowledged" as used in the Tribal List Act and the FAP (Part 83) process. They also demonstrate that in other cases, including ongoing cases, the Secretary has interpreted the IRA's term "recognized" in a "cognitive or quasi-anthropological sense," rather than a "jurisdictional" sense, indicative of acknowledgment.

b) The authority cited by the Secretary respecting exhaustion is clearly distinguishable.

The authorities chiefly relied upon by the Secretary for the proposition that a tribe must exhaust the FAP (Part 83) process as a precondition to reorganization under the IRA are clearly distinguishable because none of her cited cases involve the IRA.

In *James v. U.S. Dept of Health & Human Servs*, 824 F. 2d 1132 (D.C. Cir. 1987)[16] a group of Indians challenged the award of a DHHS grant to a recently acknowledged tribe. The claim was primarily dismissed based upon mootness.[17] 824 F. 2d, 1136. Alternatively, the plaintiffs sought an order directing the Secretary to acknowledge the plaintiff Indian group as a tribe under the Tribal List Act and/or the FAP (Part 83) process. The case did not involve any claim of right or process under the IRA. The Indian group did not have a treaty.

Muwekma Ohlone Tribe v. Salazar, 708 F. 3d 209 (D.C. Cir. 2013)[18] also did not involve the IRA, and did not involve a treaty. Rather, the *Muwekma's* principal claim was that Interior denied Muwekma equal protection by requiring Muwekma to proceed under the Part 83 process despite summarily recognizing two

16 Appellee's Br., at 15

17 The Court's decision rested upon findings, including that the dispute could only reoccur if the Plaintiff Indian group misrepresented itself that it was acting on behalf of the federally recognized tribe.

18 Appellee's Br., at 17

other Indian tribes—the Ione Band of Miwok (Ione) and the Lower Lake Rancheria of California (Lower Lake)—outside the Part 83 process.[19] 708 F. 3d at 136. The case was really about when the Secretary could exempt tribes from the FAP (Part 83) process in compiling her list under the Tribal List Act, and how such exemptions may affect similarly situated tribes.[20]

United Tribe of Shawnee Indians v. United States, 253 F. 3d 543 (10th Cir. 1993) also did not involve, in any way, a determination as to whether the plaintiffs

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19 citing *Muwekma Ohlone Tribe v. Kempthorne*, 452 F. Supp. 2d 105, 110 (DDC 2006).

20 The *Muwekma* case actually raises more concerns for the Secretary than providing support for her legal position. In *Muwekma,* the Court held that "If [an] agency makes an exception in one case, then it must either make an exception in a similar case or point to a relevant distinction between the two cases." 708 F. 3d at 138 The Court affirmed the lower Court's holding that the Secretary was obligated to treat similarly situated tribes the same or explain why different treatment was appropriate. Ultimately, the Court found that the Secretary provided a sufficient explanation as to why the Muwekma were not similarly situated to the other tribes. Applying these principles to the case at bar raises additional concerns. The Secretary clearly treated the Sault Ste. Marie tribe differently by summarily recognizing the tribe outside the FAP (Part 83) process. See *City of Sault Ste. Marie v. Andrus*, 532 F. Supp. 157 (DDC, 1980) Of course, the Sault Ste. Marie were one of the other bands recognized under the 1855 treaty and were illegally administratively terminated at the same time as the Mackinac. Moreover, four other acknowledged tribes– the Grand Traverse Band of Ottawa and Chippewa Indians, the Pokagon Band of Potawatomi Indians, the Little Traverse Bay Bands of Odawa Indians, and the Little River Band of Ottawa Indians, "were parties to the same series of treaties (including the 1855 Treaty) and the same termination by Secretary Delano in 1872." See *Grand Traverse Band of Ottowa and Chippewa Indians v. Office of the U.S. Attorney for the Western District of Michigan*, 369 F. 3d 960, 962 (6th Cir., 2004) noted in *Carcieri*, 555 US, at 399 ((Breyer, J., concurring) On remand, these facts should certainly be considered.

were a recognized tribe under the IRA. Rather, it was an action to seeking a mandate to include a group on the list of recognized tribes maintained by Bureau of Indian Affairs (BIA) pursuant to the FAP (Part 83) process.

The cases cited by the Secretary merely stand for the proposition that the courts will not order the Secretary to engage in summary tribal acknowledgment in the FAP (Part 83) process, unless the Secretary is dealing with similarly situated tribes. The cases have no bearing on the Secretary's duties under the IRA.

The case at bar is substantially different. The Mackinac have not asked for a summary recognition process, nor have they asked for APA review of a FAP (Part 83) process, nor do they state claims under the Tribal List Act. Rather, the Mackinac have sought reorganization and initiated a process under the IRA and 25 CFR Part 81. In this case, the Mackinac exhausted the processes under the IRA and 25 CFR Part 81. And, unlike the cases discussed above, the Mackinac have a treaty promising government-to-government relations. The cases are clearly distinguishable.

c) The Secretary's attempt to distinguish *Noatak* and *Montoya* actually support Mackinac's argument.

In her reply brief,[21] the Secretary attempts to distinguish *Native Village of Noatak v. Hoffman*, 896 F.2d 1157 (9th Cir., 1988) and *Montoya v. United States*, 180 U.S. 261 (1901) cited by the Mackinac for the proposition that Courts retain

21Appellee Br., at 20-23

the authority to independently determine whether Congress has recognized a tribe, notwithstanding the Tribal List Act and FAP (Part 83) process.[22]

The Court in *Noatak* considered the issue as to whether Alaska Native tribes were "recognized" for the purposes of 28 USC 1362 (District Court jurisdiction to hear actions brought by a recognized tribe"). The Court held that the tribes were tribes because they had been the subject of Congressional legislation dealing with them as tribes. The Court reasoned that

> No statute expressly outlines how a tribe may become duly recognized for purposes of section 1362 jurisdiction. . . . It is true that section 1362 speaks of recognition by the Secretary of the Interior, not Congress, but the Secretary is only using power delegated by Congress. If Congress has recognized the tribe, *a fortiori* the tribe is entitled to recognition and is in fact recognized by the Secretary of the Interior.

896 F.2d, at 1160

The holding in *Noatak* reflects that "There has never been a single, all-purpose definition of the terms 'Indian tribe' or 'Indian nation' for federal purposes, despite references to such entities in the United States Constitution and a wide array of federal enactments." COHEN, Handbook of Federal Indian Law, §3.02[1] (2005 Ed.) More often than not, whether an entity meets the definition of a "tribe" for any specific statutory purpose will necessarily be dependent upon specific statutory provisions of the applicable statute. As the Court in *Carcieri* stated, "When Congress has enacted a definition with detailed and unyielding

22Appellant's Br. At 25

provisions the Supreme Court must give effect to that definition even when it could be argued that the line should have been drawn at a different point." *Carcieri*, 555 U.S., at 394.

The Tribal List Act and the FAP (Part 83) processes may be dispositive of tribal status in cases where the applicable statutory definitions incorporate the Secretary's List or the FAP (Part 83) process.[23] In other cases, Congress has clearly expanded the definition of Indian tribe in various statutes to include entities not on the Secretary's list of acknowledged tribes.[24] In such cases, federal Courts will have to determine the tribal status of entities without regard to the Tribal List Act or the FAP (Part 83) process. And of course, the Tribal List Act clearly observes that courts should be involved in determining tribal status. See P.L. 103-454, Title I, §103(3)

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23 Statutes defining Indian tribe with specific reference to recognition by the Secretary of the Interior are in the minority, but may be found at 25 USCA §1901(8); 42 USC § 9911(e)(1)

24 E.g. The most common definition of Indian tribe in statutes is the definition of Indian tribe in the Self-Determination Act [25 USCA 450(e)],(i.e. "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act ... which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians) The definition makes no reference to the Secretary, and none of the Alaska Native village and regional corporations appear on the Secretary's list of federally acknowledged Indian tribes. This definition is incorporated by reference in 25 USCA §81, 25 USCA §3202 (10), 42 USCA §§ 3791 and 17502; Compare 25 USCA §1452(8); 25 USC §1603(14); 33 USC § 1377

Noatak , Carcieri, and the Tribal List Act are in accord in holding that in many cases, the Secretary's decision is not dispositive as to tribal status in all cases. Rather, in many cases, courts will be called upon to determine tribal status based upon the "detailed and unyielding provisions" enacted by Congress in various statutes.

In the present controversy, the IRA's definition of Indian (and consequently the definition of Indian tribe per *Carcieri)* references "recognized Indian tribe", however, the IRA was enacted in 1934, which was several decades before the Part 83 process was established in 1978.[25] It would be absurd to suggest that in 1934 Congress intended the Secretary to determine tribal status based upon the FAP (Part 83) process developed in 1978.

While amending the IRA in 1988 to expand the definition of tribes eligible for reorganization, Congress did not incorporate the FAP (Part 83) process into the IRA's definition of tribe, nor reference the Secretary.[26] In 1994 Congress declined to link the FAP process with the IRA when it enacted the Tribal List Act.[27] As a result, Congress never linked the definitions of tribe for IRA purposes [25 USCA §479] and the definition of tribe for Tribal List Act purposes [25 USCA §479a].

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25 Appellee Br., at 11

26 Pub. L. 100-581, See Appellant's Br., at 16

27 [25 USCA §479a-1]

They are clearly different.[28] If Congress wanted to incorporate or otherwise link the definition of Indian tribe in the IRA and the List Act, it could easily have done so, as it has done in many other cases.[29]

In substance, the definition of "Indian" and "tribe" in the IRA is unique among Congressional enactments. It is not linked to any other federal statutory definition of Indian tribe. Importantly, the definition of tribe in the IRA does not defer to the Secretary's "acknowledgment" process. As a consequence, *Noatak* and *Carcieri*, provide the proper standard for determining the Mackinac's eligibility for reorganization under the IRA. The District Court and this Court should determine the Mackinac's tribal status for IRA purposes based upon the "detailed and unyielding provisions" enacted by Congress in the IRA, not some other statute.

Of course, this is a primary component of the Mackinac claim to tribal status: *i.e.*, Congress recognized the Mackinac when it enacted the 1855 Treaty promising government-to-government relations into the future. Treaty of July 31, 1855 with the Ottawa and Chippewa (11 Stat. 621). The Secretary admits

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28 The Tribal List Act,defines "Indian tribe" to mean "any Indian or Alaska Native tribe, band, nation, pueblo, village or community that the Secretary of the Interior **acknowledges** to exist as an Indian tribe." [25 USCA §479a](emphasis added) The definition of tribe under the IRA does not reference any list; rather it defines "Indian" and "tribe" in terms of persons of Indian descent who are members of any recognized Indian tribe under Federal jurisdiction in 1934, plus all descendants of such members who resided on an Indian reservation on June 1, 1934. [25 USCA §479] These are very different definitions.

29 Id.

"Historically, the federal government recognized Indian tribes by treaty and, after 1871, 'through executive orders and legislation'".[30] Once granted, recognition may only be terminated by Congress. *See Menominee Tribe v. United States*, 391 U.S. 404 (1968).[31] The Secretary does not assert at any point that the Mackinac were legally terminated. Thus, for purposes of the IRA, the Mackinac are a recognized tribe eligible for reorganization under the statute, and the statute empowers the Federal Courts to enforce the Mackinac right to reorganize. 25 USCA § 476(d)(2)

CONCLUSION

The Secretary's brief did not address the maxim i*njuria non excusat injuriam* referenced in the Mackinac's opening brief.[32] As previously noted, the Secretary lacks the authority to terminate – or not recognize – the Mackinac. Once granted, recognition may only be terminated by Congress. *See Menominee Tribe v. United States*, 391 U.S. 404 (1968).[33] The Secretary's refusal to respect the Mackinac request to reorganize under the IRA merely perpetuates a 126-year history of continuing violation of the 1855 Treaty. The Secretary offers no explanation, justification or excuse for this long standing injustice with contrived, except that the tribe did not go through the FAP (Part 83) process, which is not required under

30Appellee Br., at 5

31See also Appellant's Br., at 21-22 for additional authorities.

32See Appellant' Br., at 21

33See also Appellant's Br., at 21-22 for additional authorities.

the IRA nor implementing regulations. The Court should give effect to the maxim i*njuria non excusat injuriam*, reverse the District Court's order of dismissal and allow the matter to proceed using the proper interpretation of the IRA per *Carcieri*.

Dated: November 12, 2015

Respectfully submitted,

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November 12, 2015
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CERTIFICATE OF SERVICE

I, Elissa Matias, being duly sworn according to law and being over the age of 18, upon my oath depose and say that:

Counsel Press was retained by POSEY LEBOWITZ PLLC, Attorneys for Appellant to print this document. I am an employee of Counsel Press.

On **November 12, 2015**, counsel has authorized me to electronically file the foregoing **Reply Brief for Appellant** with the Clerk of Court using the CM/ECF System, which will serve, via e-mail notice of such filing, to any of the following counsel registered as CM/ECF users:

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A courtesy copy has also been mailed to the above listed counsel.

Unless otherwise noted, 8 paper copies have been filed with the Court on the same date via Express Mail.

November 12, 2015

/s/ Elissa Matias
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