

# **NCUIH Signs Tribal Partner Organization Letter Requesting Legislative Fix to *Carcieri v. Salazar***

Category: Policy Blog

written by Jennifer Wendling | November 3, 2022

On October 7, 2022, NCUIH signed on to a letter submitted by the United South and Eastern Tribes (USET) Sovereignty Protection Fund (SPF) to Senate Majority Leader Schumer. The letter calls on the Senate to pass a legislative fix addressing the Supreme Court's decision in [\*Carcieri v. Salazar\*](#), 222 US 379 (2009). The full text of this letter is [available here](#).

## **Background**

### ***Carcieri v. Salazar Impact on Indian Country***

In 2009, the Supreme Court issued its decision in *Carcieri v. Salazar*. The case considered whether the Secretary of the Interior could use their authority pursuant to the Indian Reorganization Act (IRA) to take land into trust for the Narragansett Tribe. The Court held that the IRA Act did not apply to Tribes that were not recognized by the federal government at the time the statute was enacted in 1934. Since the Narragansett were not formally recognized by the federal government until 1983, the Court also held that the Secretary of the Interior did not have the authority to take land into trust for the Tribe.

According to testimony provided by Larry Echo Hawk, the Assistant Secretary for Indian Affairs in 2011, "The *Carcieri* decision was inconsistent with the longstanding policy and practice of the United States under the Indian Reorganization Act of 1934 to assist federally recognized tribes in establishing and protecting a land base sufficient to allow them to provide for the health, welfare, and safety of tribal members, and to treat tribes alike regardless of their date of federal acknowledgment." The Supreme Court's decision has significantly impacted the federal government's fee-to-trust process requiring the Department of the Interior (DOI) to engage in extensive legal and historical research prior to taking land into trust. In some cases, it has also stopped the DOI from taking land into trust for some tribes altogether.

## **Letter Highlights**

In their October letter, USET notes that more than 13 years have passed since the *Carcieri v. Salazar* ruling, arguing that this decision jeopardizes the ability of federally recognized Tribal Nations to rebuild their communities and provide essential governmental programs. Tribal land bases are considered the foundation of Tribal sovereignty, and this ruling has sparked legal challenges, many of which threaten Tribal lands that have been in trust for decades, that aim to dismantle Tribal sovereignty altogether. If this decision remains unaddressed, USET states that substantial litigation over existing trust lands will ensue.

In addition, USET explains that Tribal Nations have been expressing a desire for a legislative fix to *Carcieri v. Salazar* with two specific components. The first component is a restoration of the Secretary's authority to take land into trust for all Tribal Nations. The second component is to

reaffirm the existing Tribal government trust lands and the actions of the Secretary to take land into trust.

The letter also recognizes that [H.R. 4352](#) (*To amend the Act of June 18, 1934, to reaffirm the authority of the Secretary of the Interior to take land into trust for Indian Tribes, and for other purposes*) is a critical piece of legislation necessary to stop the growing legal challenges threatening Tribal authority and overall sovereignty. In addition, USET goes on to express their support of enacting [S. 4830](#) (*A bill to reaffirm actions taken by the Secretary of the Interior for the benefit of Indian Tribes, and for other purposes*). These bills would enable Tribal Nations and the Department to move forward in restoring their Tribal homelands. Congress has enacted similar legislation for specific Tribal Nations over the years, but this would make it so that Congress does not have to consider individual bills in a piecemeal fashion.

## **Next Steps**

As a passionate supporter of Tribal sovereignty and strong Tribal economies, NCUIH was proud to sign the Tribal Partners Organization letter. NCUIH also [signed on to a similar letter in April](#) with other leading American Indian and Alaska Native advocacy organizations.

NCUIH urges Congress to pass legislation that restores the Secretary of the Interior's authority to take land into trust for all federally recognized Tribes and which reaffirms the status of existing Tribal trust lands.