

[FAQ on the June 6, 2024, San Carlos Apache v. Becerra Supreme Court Decision](#)

Category: Policy Blog

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1. What was the case about?

- The issue in this case was whether the Indian Self-Determination Act (ISDA) requires the Indian Health Service (IHS) to pay the contract support costs (CSCs) a tribe incurs when collecting and spending program income to further the services and programs transferred to tribes from IHS in a self-determination contract.
- The program income at issue is revenue collected from third-party payers such as Medicare, Medicaid, and private insurers.

2. What did the Court decide?

- The Supreme Court ruled 5-4, finding that the Indian Self Determination Act requires the Indian Health Service to reimburse Tribes for CSCs incurred when collecting and spending program income from third-party payers.
- To summarize, the court found that self-determination contracts between Tribes and IHS require spending and collection of third-party revenue. By doing this and incurring administrative costs, IHS is required by ISDA to reimburse those CSCs.
- The court also acknowledged and recognized that finding differently would go against the purpose and intent of ISDA, as it would penalize Tribes for pursuing self-determination.

3. Why is the Court's decision correct from an Indian Law perspective?

- Congress passed ISDA in 1975, in part, to support Tribal self-determination by promoting the "effective and meaningful participation by the Indian people in the planning, conduct, and administration" of federal healthcare programs.
- Under ISDA, Tribes enter into contracts with the Indian Health Service (IHS) to assume responsibility for administering the healthcare programs that IHS would otherwise operate for the Tribe.
- ISDA requires that health programs operated by Tribes under a self-determination agreement receive the same amount of funds that the program would have received had IHS maintained control of the program. This includes funding to cover administration and overhead costs that the government does not incur, and thus does not pay, when it runs the program, otherwise known as "contract support costs."
- In their decision, the court focused on the purpose of ISDA in the context of the plain language of the statute.
- Using this approach, the court found that the expenses at issue fall squarely within ISDA's definition of contract support costs, and reimbursement of these expenses align with statutory requirements.
- By basing their decision on ISDA, the court has acknowledged the federal trust responsibility and obligation to Tribes.
- Notably, the Court did not address the budgetary implications associated with including these costs in contract support costs payments, because ISDA clearly does not place any cost limitations on CSCs.
- Cost analysis is within the domain of Congress, and it is outside of Court's power to account

for cost concerns when the statutory text does not require it.

4. What does this mean for CSCs?

- CSCs must now include the expenses incurred by Tribes when spending third-party revenue to operate their healthcare program.
- This means that IHS is now responsible for reimbursing those costs, on top of the CSCs already being reimbursed.

5. What does this generally mean for the IHS budget?

- To account for the increased CSCs for collecting and spending third-party revenue, the overall CSCs line item will have to be increased.
- This will be done during the appropriations process and could result in the IHS budget increasing overall, or for other areas to receive decreased funding to meet the increased requirement for CSCs.
- It is not yet clear when and how the increased CSCs will affect the IHS budget, and NCUIH is monitoring budget discussions relating to this topic.
- The federal government estimated the financial impact of the decision to be between \$800 million and \$2 billion annually but could not provide support for this estimation when pressed to do so by the Court in oral argument. It is not clear where the government got this number from, and it is too early to tell what the actual cost will be.

6. What are the expected effects on the FY2024 and FY2025 Budget?

- The CSCs are not expected to affect the FY2024 appropriations, as they have already been set and dispersed, but the effect on FY2025 and beyond is unclear.
- The Congressional Budget Office (CBO) is currently updating the FY2025 score for the Interior bill based off the decision, but how the score affects the actual budget will depend on the appropriated amount for FY25.

7. Is there a long-term budgetary solution for increasing CSC costs?

- IHS and partner organizations such as NIHB have emphasized that the best option moving forward is for CSCs to be classified as mandatory funding starting in 2026.
- This will be achieved in a similar process as advance appropriations were, through the appropriations process by including specific language in the appropriations bill.
- The shift to mandatory has been a priority of the National Tribal Budget Formulation Workgroup for several years.
- Last year, NCUIH also signed on to [a letter](#) with the National Indian Health Board and 21 Tribal Nations in support of shifting CSCs to mandatory for FY2024.
- There is hope that the decision will place increased pressure on Congress to classify CSCs as mandatory.

8. How is IHS implementing the decision?

- Director Tso and IHS are taking steps to create and implement a plan of action for updating the CSC reimbursement process to account for the decision.
- On June 13, Director Tso released a [Dear Tribal Leader Letter](#) outlining the Agency's plan moving forward, which includes convening the CSC Advisory Group in July 2024 and a full Tribal consultation by August 2024.
- IHS also released an [interim guidance document](#) on the process for claiming CSCs for third party expenses.

9. Will UIOs be affected?

- Again, it is not clear whether UIOs will be affected or not.
- How the increase in CSCs will affect the budget will not be clear until the actual cost of the increase is known
- NCUIH will keep a close eye on how the budget discussions are developing.

10. If UIOs are affected, how would this play out?

- Once the costs are determined, it is possible that the urban Indian health line item will be reduced to make up for the additional CSCs.
- This is because UIO funds are discretionary appropriations and the IHS budget is in the Interior appropriations bill.
- There is only a certain amount of money the committee can allocate amongst all agencies within the Interior.
- Another aspect to consider is that due to being an indefinite appropriation and being provided an unlimited amount of funds, CSCs are paid first before any other areas of the IHS budget can be paid, affecting the total amount available. It may not be just the urban Indian health line item impacted, but other areas of the IHS budget also seeing decreases as well.
- However, because the urban Indian health line item has historically been close to 1% of the IHS budget, it is possible that the urban Indian health line item remains unaffected, and the funds are allocated from a different line item within the IHS budget.
- Urban Indian Health is funded under the Indian Health Service through the Services Account. CSCs are funded through the Indian Health Service under the CSC Account. However, IHS has one overall budget.
- Which line item is affected will be decided during the appropriations process.
- NCUIH plans to monitor this situation moving forward and will provide updates, once there is more certainty in how the budget will be affected by the decision.
- It's important to note that this decision is not expected to impact funding for FY2024 as those funds have already been appropriated. Any impacts to UIOs or the IHS budget overall are expected to begin in FY2025.