

Adoptive Couple v. Baby Girl, 570 U.S. at ____, No. 12-399, slip op. at 17 (U.S. June 25, 2013)

Issues: (1) Can a non-custodial parent invoke the Federal Indian Child Welfare Act to block an adoption voluntarily and lawfully initiated by a non-Indian parent under state law? (2) Does the ICWA define "parent" in 25 U.S.C. § 1903(9) to include an unwed biological father who has not complied with state law rules to attain legal status as a parent?

*Summary from U.S. Law Week: A provision of the 1978 federal Indian Child Welfare Act, 25 U.S.C. §1912(f), which bars involuntary termination of parental rights where there is not a heightened showing that serious harm to an Indian child is likely to result from the parent's "continued custody" of the child, is inapplicable where the relevant parent never had custody of the child. Further, Section 1912(d), "which conditions involuntary termination of parental rights with respect to an Indian child on a showing that remedial efforts have been made to prevent the 'breakup of the Indian family'—is inapplicable when, as here the parent abandoned the Indian child before birth and never had custody of the child," Justice Samuel A. Alito Jr. writes for the majority. The court also makes clear that Section 1915(a), "which provides placement preferences for the adoption of Indian children, does not bar a non-Indian family" like the adoptive couple here "from adopting an Indian child when no other eligible candidates have sought to adopt the child." The case involved a dispute over a little girl who is 3/256 Cherokee. The state court below ruled that the ICWA required her to be taken at the age of 27 months from her adoptive parents and turned over to her biological father, with whom she had had no prior contact.

Carciere v. Salazar, 555 U.S. 379 (2009)

Subjects: Narragansett Indian Tribe of Rhode Island; United States. Dept. of the Interior; Land into trust -- Narragansett Indian Tribe of Rhode Island -- Rhode Island -- Charlestown; Trust lands -- Narragansett Indian Tribe of Rhode Island -- Rhode Island -- Charlestown; Narragansett Indian Tribe of Rhode Island -- Housing; Rhode Island; United States. Indian Reorganization Act; Rhode Island Indian Claims Settlement Act; United States. Administrative Procedure Act; United States. Constitution.

Summary of the opinion from USLW: The Indian Reorganization Act, 25 U.S. C. §479, permits the Secretary of the Interior to acquire land and hold it in trust to provide "land for Indians" only for a tribe that was under federal jurisdiction when the statute was enacted in 1934, and not for tribes subsequently recognized by the federal government, because the statute defines "Indian" as "members of any recognized Indian tribe now under Federal jurisdiction[.]"

*Issues: (1) Does Indian Reorganization Act empower secretary to take land into trust for Indian tribes that were not recognized and under federal jurisdiction in 1934? (2) Does act of Congress that extinguishes aboriginal title and all claims based on Indian rights and interests in land preclude secretary from creating Indian country there? (3) Does providing land "for Indians" in

Indian Reorganization Act establish sufficiently intelligible principle upon which to delegate power to take land into trust?

Reps. Ed Markey, D-Mass., Colleen Hanabusa, D-Hawaii, and Don Young, R-Alaska, have introduced legislation on February 13, 2013, for a restoration of the authority of the U.S. Department of Interior to place land into trust for all Indian tribes, regardless of when they were federally recognized by the United States.

A clean *Carcieri* fix passed the House in December 2010. Hanabusa added that the Supreme Court's *Carcieri* decision completely ignored the congressional intent of the Indian Reorganization Act of 1934 and reversed 75 years of the Interior secretary's authority to take land into trust for Indian tribes. The failure of the Senate Democrats to pass similar legislation in the 112th Congress have mooted previous success in the House, so a new *Carcieri* fix bill must still pass there now in the 113th Congress.