

**STATEMENT OF
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UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE
HOUSE COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON INDIAN AND INSULAR AFFAIRS**

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Good morning, Chair Hageman, Ranking Member Leger Fernández, and members of the Subcommittee. My name is Kathryn Isom-Clause, and I am Taos Pueblo and the Deputy Assistant Secretary for Policy and Economic Development for Indian Affairs at the Department of the Interior (Department). Thank you for the opportunity to present testimony on H.R. 1208, “*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,*” and H.R. 6180, “*To reaffirm the applicability of the Indian Reorganization Act to the Poarch Band of Creek Indians, and for other purposes.*”

Restoring Tribal homelands is one of this Administration’s highest priorities. This Administration has repeatedly stressed the importance of and need for a *Carcieri* fix. Since the FY 2022 Budget Request, the President has proposed a sensible fix to treat all Tribes equally in exercising the fundamental responsibility of placing land into trust for Tribes.

In *Carcieri v. Salazar*, the United States Supreme Court was faced with the question of whether the Department could acquire land in trust under section 5 of the Indian Reorganization Act (IRA) on behalf of the Narragansett Tribe of Rhode Island for a housing project. The Court’s majority noted that section 5 permits the Secretary to acquire land in trust for Federally recognized Tribes that were “under Federal jurisdiction” in 1934. It then determined that the Secretary was precluded from taking land into trust for the Narragansett Tribe, who had stipulated that it was not “under Federal jurisdiction” in 1934.

The *Carcieri* decision upset the settled expectations of both the Department and Indian Country and led to confusion about the scope of the Secretary’s authority to acquire land in trust for all Federally recognized Tribes—including those Tribes that were Federally recognized or restored after the enactment of the Indian Reorganization Act. As many Tribal leaders have noted, the *Carcieri* decision is contrary to existing congressional policy, and has the potential to subject Federally recognized Tribes to unequal treatment under Federal law.

Since the *Carcieri* decision, the Department must examine whether each Tribe seeking to have land acquired in trust under the Indian Reorganization Act was “under Federal jurisdiction” in 1934. This analysis is done on a Tribe-by-Tribe basis, even for those Tribes whose jurisdictional status is unquestioned. This analysis may be time-consuming and costly for Tribes and for the Department. Although the Department conducts extensive research into this analysis, if the Department decides to take land into trust and provides notice of its intent, the *Carcieri* decision

makes it likely that the Department will face costly and complex litigation over whether applicant Tribes were under Federal jurisdiction in 1934. Overall, it has made the Department's consideration of fee-to-trust applications more complex and created an additional administrative burden for the Federal government and Tribes related to decisions taking land into trust.

H.R. 6180 would address the impact that the *Carcieri* decision has had on the Poarch Band of Creek Indians by deeming that the Band shall be considered as having been under Federal jurisdiction as of June 18, 1934, for the purposes of the IRA. The bill would also congressionally reaffirm previous decisions by the Secretary to take land into trust for the Poarch Band of Creek Indians under IRA authorities.

H.R. 1208 would be a universal legislative solution to the *Carcieri* decision for all Tribes. The language is identical to the proposal contained in the President's Budget Request for fiscal year 2025. This language would clarify Congress's intention in enacting the IRA—the acquisition of land into trust for Tribes to secure a land base on which to live and, through self-determination, to develop in their best interest.

The Department supports H.R. 6180 and H.R. 1208. Tribal homelands are at the heart of Tribal sovereignty, self-determination, and self-governance. The power to acquire lands in trust is an important tool for the United States to effectuate its longstanding policy of fostering Tribal self-determination. Congress has worked to foster self-determination for all Tribes and did not intend to limit this essential tool to only one class of Tribes. The Department has consistently expressed strong support for a universal legislative solution to the *Carcieri* decision for all Tribes. The President's budgets for fiscal years 2022 through 2025 have proposed a simple and clean fix to the IRA to ensure the Secretary has the authority to take land into trust for all Tribes without the need for a complex review of whether a Tribe was “under Federal jurisdiction” in 1934. The Department urges Congress to enact a legislative fix to the *Carcieri* decision for all Tribes to eliminate the need for each Tribe to seek separate legislation.

Conclusion

Chair Hageman, Ranking Member Leger Fernández, and members of the Subcommittee, thank you for the opportunity to provide the Department's views on these important bills. I look forward to answering any questions that you may have.