No. 03-2647

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

DONALD L. CARCIERI, in his capacity as Governor of the State of Rhode Island; STATE OF RHODE ISLAND and PROVIDENCE PLANTATIONS; TOWN OF CHARLESTOWN, RHODE ISLAND

Plaintiffs-Appellants

v.

GALE A. NORTON, in her capacity as Secretary of the United States Department of the Interior
FRANKLIN KEEL, in his capacity as Eastern Area Director of the Bureau of Indian Affairs, U.S. Department of the Interior

Defendants-Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

FEDERAL APPELLEES' RESPONSE TO PETITION FOR REHEARING *EN BANC*

WILLIAM B. LAZARUS
JUDITH RABINOWITZ
DAVID C. SHILTON
ELIZABETH ANN PETERSON #6517
Attorneys, Env't & Nat. Res.Div.
U.S. Department of Justice
P.O. Box 237954, L'Enfant Station
Washington, D.C. 20026
(202) 514-3888

TABLE OF CONTENTS

TABLE OF AUTHORITIES

PAGE

CASES:

STATUTES RULES AND REGULATIONS:

PAGE

MISCELLANEOUS

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 03-2647

DONALD L. CARCIERI, in his capacity as Governor
of the State of Rhode Island; STATE OF RHODE ISLAND
and PROVIDENCE PLANTATIONS;
TOWN OF CHARLESTOWN, RHODE ISLAND

Plaintiffs-Appellants

v.

GALE A. NORTON, in her capacity as Secretary of the
United States Department of the Interior
FRANKLIN KEEL, in his capacity as Regional Director of the
Bureau of Indian Affairs, U.S. Department of the Interior

Defendants-Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

FEDERAL APPELLEES' RESPONSE TO PETITION FOR REHEARING *EN BANC*

This brief is filed pursuant to this Court's order of May 26, 2005, requiring that the federal appellees respond to the arguments raised in the Petition for Rehearing filed by the state and municipal appellants ("State") with respect to the application of section 5 the Indian Reorganization Act ("IRA"), 25 U.S.C. 465, to the Narragansett Indian Tribe ("Tribe"). Section 5 authorizes the Secretary of the Interior ("Secretary") to acquire lands or interests in lands for Indians, to be held by the United States in trust for tribes or individual Indians. The State argued to the panel that the IRA did not authorize the Secretary to acquire lands in trust for the Tribe,

because only tribes that were recognized and under federal jurisdiction on June 18, 1934, were entitled to the benefits of Section 5. It asserted that the statute dictated this limitation, because it defined "Indian," *inter alia*, as a "member of a federally recognized tribe now under federal jurisdiction." The State urged that "now" in this definition must be interpreted to mean "on the date of the statute's enactment." The panel correctly rejected the State's interpretation and ruled that the Secretary's longstanding interpretation of "now" in the statute is entitled to "particular deference" Carcieri v. Norton 398 F.3d 22, 30 (1st Cir. 2005), and that the State's reading of the Act is contrary to Congress's interpretation of the statute as expressed in later enactments. Id. at 32.

In its petition for rehearing, the State reasserts its interpretation of "now under federal jurisdiction" and further incorrectly asserts (Pet. 6-7) that the panel decision here conflicts with decisions of the Supreme Court and the Fifth and Ninth Circuits, and (Pet. 14) that there is no evidence in the record either establishing the Secretary's longstanding interpretation of the statute, or demonstrating that the State's interpretation would adversely affect other tribes. To the contrary, the panel's decision, which adopted the interpretation that has been applied consistently by the Secretary throughout the period since the statute's enactment, does not conflict with Supreme Court or other authority. Moreover, it reflects the clear policy of Congress as expressed in subsequent enactments. Imposing the State's proposed limitation on the Secretary's land acquisition authority would adversely impact scores of tribes for whom land has been, or may be, acquired in trust. In addition, the statutory interpretation on which the State's theory depends would deprive the members of

those tribes of valuable benefits to which they are entitled as Indians.

1. The panel correctly adopted the Secretary's interpretation of the IRA, which has been applied consistently since the statute's enactment.

For the past 70 years, the Secretary of the Interior has interpreted the IRA to authorize the acquisition of trust lands for Indian tribes recognized at the time of the acquisition. The State seeks to upset both the settled understanding that currently recognized tribes are entitled to have land taken into trust for them and the hundreds of land transactions premised on that understanding, on grounds that the definition of "Indian" in section 19 of the IRA, 25 U.S.C. 479, limits the benefits of the statute to a fixed set of tribes that were under federal jurisdiction on June 18, 1934. The Secretary's interpretation has not been the subject of controversy, and therefore no occasion for its articulation in published form has arisen.[1/] The historical application of the authority to take lands into trust, however, shows that the Department of the Interior ("Interior") has consistently interpreted the word "now" in the first criterion of 25 U.S.C. 479 to mean the time of application of the statute, or as the panel articulated it, "today." See, e.g., Jack and Shirley Baker v. Muskogee Area Director, Bureau of Indian Affairs, 19 IBIA 164, 179 (1991) ("Appellants come within the IRA definition because they are members of a recognized Indian tribe under Federal jurisdiction."); accord, Zarr v. Barlow, 800 F.2d 1484, 1488 (9th Cir. 1986) ("as a

---

[1/] Interior's interpretation of the language of section 479 has never been challenged previously, either before the Secretary or before the courts. The "proposition that membership in a recognized tribe as of 1934 is sufficient to satisfy the requirements of section 19 of the IRA" was raised in Walter S. Brown v. Commissioner of Indian Affairs, 8 IBIA 183, 188 (1980), but the Board did not reach the issue. See 8 IBIA at 184.

person of Indian descent who is a member of a recognized tribe Zarr qualifies [as "Indian"] under 25 U.S.C. 479). Put another way, the Secretary interprets "now under federal jurisdiction" in the first criterion of the statutory definition of "Indian" to authorize acquisition of lands in trust for the tribes listed on the current Federal Register list of recognized tribes and for the members of those tribes, each of which has a current, as opposed to past, or potential future, relationship with the United States.[2/]

Interior's earliest decisions implementing the IRA and its companion, the Oklahoma Indian Welfare Act, 25 U.S.C. 501 *et seq.*[3/] demonstrate Interior's view that the IRA applied to tribes with a current relationship with the United States; for example, the Interior Solicitor explained that, to be eligible to participate, a group's "identity as a political organization must remain" (Solicitor's Opinion, July 29, 1937, 1 Op. Sol. on Indian Affairs 774 (U.S.D.I. 1979) and there "must be a currently existing group distinct and functioning as a group," in addition to evidence that the group's "ethnographic history [showed it] in the past to have been a distinct and well-

---

[2/] The State's suggestion (Pet. 13) that Congress would have amended the definition to remove the word "now," or to add "or hereafter," if it wished to provide authority to include members of later-recognized tribes as "Indians," is unavailing. The addition of "or hereafter" would suggest that individuals could be currently entitled to benefits as "Indians" on the basis of speculative future events, an anomalous outcome; and, as discussed below (p.8), "now" serves to clarify that members of tribes that have passed out of existence are not covered by the Act.

[3/] The Oklahoma Indian Welfare Act extended the six provisions of the IRA that were not applicable in Oklahoma, including Section 5 land acquisition authority, to Oklahoma tribes. 25 U.S.C. 501; see Muscogee (Creek) Nation v. Hodel, 851 F.2d 1439, 1442 (D.C. Cir. 1988) , cert. denied, 488 U.S. 1010 (1989).

recognized tribe or band." Solicitor's Opinion of Dec. 13, 1938, 1 Op. Sol. on Indian Affairs 864 (U.S.D.I. 1979), because "[a] particular tribe or band may well pass out of existence as such in the course of time." Id. Interior's acknowledgment regulations codify this longstanding view and state that a "newly acknowledged tribe shall be considered an historic tribe and shall be entitled to the privileges and immunities available to other federally recognized historic tribes by virtue of their government-to- government relationship with the United States." 25 C.F.R. 83.12(a) (2004).

In the years since the IRA was adopted, the Secretary has exercised the authority in Section 5 on behalf of any tribe currently under federal jurisdiction, regardless of the date on which it was first recognized. She has acknowledged more than a dozen tribes under the Part 83 regulations, and dozens more have been recognized by administrative and Congressional actions. See, e.g., GAO Report, GAO-02-49, Indian Issues: Improvements Needed in Tribal Recognition Process, Appendix I, at 24 (Nov. 2001) (listing 47 tribes recognized since 1961)). The Secretary has acquired lands or is considering acquisitions for the great majority of these newly-recognized tribes. While no single compilation all of the land transactions the Secretary has entered into on behalf of later-acknowledged tribes exists, it is unquestionable that the Secretary has acquired lands for tribes across the nation on the understanding that trust land acquisition is authorized for all currently recognized tribes.[4/]

[4/] For example, the Secretary has acquired 5 parcels of land, totaling 32.47 acres, (continued...)

If the State's interpretation were correct, all of these acquisitions, and the United States' claim to hold the lands in trust for tribal beneficiaries, would be called into question.[5/] Such an outcome would severely undermine the IRA's clear intent to reestablish tribal self-government and economic self-sufficiency, discussed below. Interior's longstanding administrative interpretation, on the other hand, is both reasonable and consistent with the statutory purpose, and is entitled to the deference accorded it by the panel.

2. The plain language and purposes of the IRA support the panel's interpretation of 25 U.S.C. 479

Section 5 of the IRA authorizes acquisition of lands in trust for "Indians," defined as:

> all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction, and all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation, and shall further include all other persons of one-half or more Indian blood

25 U.S.C. 479. Thus, a person is an "Indian" for purposes, *inter alia*, of determining whether a trust acquisition on his or her behalf is authorized, if he or she is a person

---

[4/](...continued)
for the Jamestown S'Klallam Tribe of Washington, recognized in 1981 and 54 parcels, totaling 1,608.13 acres, for the Saulte Ste. Marie Tribe of Michigan, recognized in 1972. Records of these particular transactions from the BIA's field and regional offices are attached as an addendum to this brief.

[5/] Even assuming that the State is correct in asserting that the Quiet Title Act would prevent the reversion of title to lands previously acquired by the Secretary in trust for later-acknowledged tribes, these tribes, some of which have not yet had any land acquired in trust for them, would be prevented from acquiring any additional trust lands if the State's interpretation were adopted.

of Indian descent who:

1. Is a member of a recognized tribe now under federal jurisdiction
2. Is a descendant of a member of a recognized tribe now under federal jurisdiction, who was resident on a reservation on June 1, 1934, or
3. Is a person of one-half or more Indian blood

The plain language of the definition accords the benefits of the statute to members of tribes "now" under federal jurisdiction – and says nothing to suggest that its benefits were intended to extend only to tribes that had previously received federal government benefits or were recognized on a particular date. Indeed, the definition's second provision strongly suggests that Congress did not intend to identify a particular date by using the word "now." Where it intended to establish a time limitation on eligibility, Congress used the past tense and included specific dates, (e.g. "*was* resident on a reservation *on June 1, 1934*"). Accordingly, the choice of the present tense and the word "now," as opposed to "June 18, 1934" or "the date of enactment of this Title," was apparently deliberate. Interior has interpreted "now" to mean "now" when the authority is invoked: that is, the Secretary is authorized to acquire trust land for tribes currently under federal jurisdiction.

Interpreting Section 5 to apply to currently recognized tribes is consistent with the broad remedial purposes of the IRA, which encompassed both ending the loss of lands by Indians and reestablishing government-to-government relations between the United States and Indian groups, including those that had suffered the loss of their lands through earlier, assimilationist policies or had been relegated to sharing reservation lands with other, unrelated Indian groups. 25 U.S.C. 461, 476; see Solicitor's Opinion, M-27810 (December 13, 1934) 1 Op. Sol on Indian Affairs at 489

(U.S.D.I. 1979). As the language and legislative history of the IRA demonstrate, the purpose of the IRA was to "establish machinery whereby Indian tribes would be able to assume a greater degree of self-government, both politically and economically." Morton v. Mancari, 417 U.S. 535, 542 (1974). The Act ended the practice of breaking reservation lands up into individual allotments, 25 U.S.C. 461; prohibited further alienation of Indian lands and interests unless it worked to consolidate tribal lands, 25 U.S.C. 464; and established loans for economic development of tribes, 25 U.S.C. 470. In addition, the IRA empowered tribes to reorganize and adopt a constitution and bylaws, employ legal counsel, exert control over tribal lands, and negotiate with federal, state, and local governments, 25 U.S.C. 476. Its clear intention was to provide the means for Indian tribes to reestablish themselves as economically and politically independent entities.

Consistent with its broad remedial purposes, the IRA contains no suggestion of an intent to exclude from its benefits tribes that had existed continuously since before the arrival of the Europeans but were not formally recognized in June of 1934. See City of Sault Ste. Marie v. Andrus, 532 F. Supp. 157, 161 (D.D.C.1980) ("[A]lthough the question of whether some groups qualified as Indian tribes for purposes of IRA benefits might have been unclear in 1934, that fact does not preclude the Secretary from subsequently determining that a given tribe deserved recognition in 1934."). Moreover, the IRA authorizes the Secretary to proclaim new reservations, 25 U.S.C. 467, consistent with its remedial purposes but entirely inconsistent with the State's theory (see Br.10-11) that all of the "Indians" covered by the Act were "reservation Indians" in 1934. Instead, the Act provides broad authority to acquire and restore

lands to Indian tribes and to reestablish Indian self-government and economic self-determination.

To the extent that Congress's purpose in including the phrase, "now under Federal jurisdiction" is addressed in the legislative history, it appears that the definition of "Indian" was qualified by this phrase to ensure that the members of tribes under federal supervision on the date of enactment, but whose relations with the United States were later terminated, would not be covered by the IRA. See Hearing Before the Senate Committee on Indian Affairs, 73d Cong. 2d Sess. Part 2 at 266.[6/] Interpreting "now" as "currently" when the statute is invoked effectuates this purpose. The State's interpretation of the statute would do the reverse: It would authorize trust acquisitions on behalf of tribes whose government-to-government relationship with the United States had been terminated, while prohibiting such acquisitions for tribes with which the United States first established a government-to-government relationship after 1934. This unreasonable result is clearly at odds with the statutory purpose, while the Secretary's interpretation, under which the IRA authorizes trust acquisitions only for tribes with a current government-to-government relationship with the United States, is both reasonable and consistent with the statute's purposes.

[6/] In a colloquy with the Commissioner of Indian affairs, one of the Act's sponsors expressed concern that tribes had been recognized that should not remain under federal supervision. Hearing Before the Senate Committee on Indian Affairs, 73d Cong. 2d Sess. Part 2 at 266. The Commissioner suggested adding the phrase "now under federal jurisdiction" to address this concern, presumably by clarifying that members of tribes that had lost their relationship to the United States would not be included in the definition of "Indian."

3. The panel's interpretation is consistent with the policy of Congress as expressed in later enactments .

As the panel correctly explained, 398 F.3d at 32, Congress has prohibited the Secretary from distinguishing among recognized tribes with regard to the privileges and immunities afforded such tribes. See 25 U.S.C. 476 (f) & (g). Moreover, Congress has never expressed concern that the Secretary has taken land into trust for tribes recognized after 1934, despite its awareness of the Secretary's actions. For example, in the Indian Land Consolidation Act, ("ILCA"), Congress defined "tribe" more broadly than does the IRA, and explicitly stated that the authority to acquire lands in IRA section 465 should extend to all tribes, notwithstanding section 478, which provides that the IRA does not apply to tribes that voted against its application to them. 25 U.S.C. 2202. The ILCA further provides that this authority is not intended to "supersede any other provision of Federal law which authorizes, prohibits, or restricts the acquisition of land for Indians with respect to any specific tribe, reservation, or state(s)," such as the Maine Settlement Act. Id.[7/] The intent expressed in the ILCA, to authorize trust land acquisition for all tribes, except where federal law has limited the Secretary's authority with respect to "specific" tribes, reservations or states, is in clear tension with the interpretation of 25 U.S.C. 479 urged by the State. The State's interpretation also conflicts directly with the Federally Recognized Indian

---

[7/] The House Report accompanying ILCA explains that this proviso was added to clarify that the acquisition authority was not intended to extend to tribes in Maine or Alaska where land claims settlement acts had dealt comprehensively with land acquisition issues. Because all of the Maine tribes were acknowledged after 1934, Congress clearly expected that the Secretary would interpret her trust acquisition authority to extend to tribes acknowledged after1934.

Tribe List Act ("List Act"), Pub.L. No. 103-454, 108 Stat. 4791 (1994), referenced in the panel's opinion. Both statutes make clear that Congress expects the Secretary to treat all federally recognized tribes alike, and neither makes any mention of the significant difference in entitlements that would flow from the State's restrictive interpretation of "now under federal jurisdiction" in section 479.

The panel stated that "[t]hese statutory * * * provisions make clear that the Secretary's IRA authority extends to the Narragansett Indian Tribe regardless of the status of its acknowledgment in 1934." The State apparently misunderstood the panel's opinion with respect to these later enactments, characterizing it as a holding that later enactments "erased the temporal limitation contained in section 479." While these later enactments do not purport to amend section 479, they uniformly indicate that Congress applies an interpretation of that provision that is broader than the one proposed by the State. For example, ILCA's directive to extend section 465 to "all tribes" surely would include some reference to the "recognized [in 1934] test" if Congress believed that the Act contained such a limitation. Enactments for specific tribes similarly have been based on an assumption that Congress expects IRA authority to extend to newly-recognized tribes. For example, the Pokagon and Little Traverse Bay Restoration Acts, 25 U.S.C. 1300j and 1300k, reaffirm the acknowledgment of particular tribes, state that the IRA applies to these tribes, and mandate the acquisition of trust lands for those newly-acknowledged tribes. Similarly, provisions such as those of the Maine and Wampanoag Indian Claims Settlement Acts, placing lands in trust, acknowledge that although the tribes affected by those Acts have accepted certain restrictions on the lands granted under them by the statutes'

terms, the lands acquired under those statutes nonetheless are to be accepted in trust for the tribes. Far from bringing specific "additional tribes within the scope of the IRA's trust provisions," as the State suggests (Pet. 12 n.8), these provisions clarify the extent to which the statutes in which they appear limit the IRA's application to these tribes. Nothing in these provisions hints in any way at an underlying assumption that the tribes are otherwise "outside the scope" of the IRA's trust provisions.

In short, Congress has acted repeatedly to affirm that the IRA is a broad remedial statute, intended, *inter alia*, to provide and protect land for Indians tribes, on which they could base the revitalization of their organizations and economies. Although the Secretary has consistently interpreted the land acquisition authority of section 5 to apply to newly-recognized tribes, Congress has not attempted to change that practice and has instead encouraged the broadest application of the IRA's provisions. The State's narrow and discriminatory interpretation of the statute is contrary to the expressed policy of Congress and was properly rejected by the panel.

4. The panel's decision does not conflict with the decisions of the Supreme Court or of any other Circuit Court of Appeals

Before the panel, the State relied on United States v. State Tax Comm'n, 505 F.2d 633 (5th Cir. 1974), as authority that the phrase "now under federal jurisdiction" in the IRA means "under federal jurisdiction on the date of enactment of the IRA." The panel correctly rejected the State's argument, pointing out, *inter alia* that the Supreme Court had reversed the relevant finding in Tax Commission when it held in United States v. John, 437 U.S. 634, 650 (1978), that the Mississippi Choctaw Tribe was entitled to the benefits of the IRA, even though it was not a federally recognized

tribe in 1934. Because the Supreme Court in John concluded that the IRA may be invoked for the benefit of groups of Indians that were *not* recognized as tribes in 1934, the panel concluded that the Supreme Court had disagreed with the State's position that the IRA could be invoked *only* for the benefit of tribes that were both recognized and under federal jurisdiction in 1934.[8/]

In its petition for rehearing, the State attempts to craft a conflict between the the panel's conclusion that the Narragansett Tribe is entitled to the benefits of Section 5 of the IRA and the discredited holding in United States v. Tax Commission, that the Mississippi Choctaw Tribe was not a tribe because "the language of 25 U.S.C. 479 positively dictates that tribal status is to be determined as of June, 1934." As noted above, the holding in Tax Commission was reversed in United States v. John , 437 U.S. 634, 649-50 (1978). In John, the Supreme Court held, contrary to the Fifth Circuit's conclusions in both John and Tax Commission, that the Indian Reorganization Act authorized the Secretary to hold the Choctaw lands in trust, because the IRA authorized the trust acquisition of lands for Indians of "one half blood or more." Far from "concurring" (Pet. 9) in the Fifth Circuit's holding, the Supreme Court rejected it – and did so on grounds entirely independent of the provision defining "Indian" as "a member of a federally recognized tribe now under

---

[8/] The State argued to the panel that a "two-part test" governed the authority of the Secretary to acquire trust lands, and that both Tax Commission and John supported that view. The State's argument did not, as implied in its petition (Pet. 6,8), address the provision of the statute allowing trust acquisitions for individual Indians of "one-half or more Indian blood." Because the application of the statute to the Mississippi Choctaw was not consistent the "two-part test," the panel concluded that John did not support the State's view.

federal jurisdiction."[9/] As the district court and the panel correctly concluded (398 F.3d at 31), "it does not appear that the reading of this particular term in the IRA was before the Supreme Court for consideration" in John, which accordingly lends no support to the State's argument that the definition of "Indian" in 25 U.S.C. 479 contains a "recognized [in 1934] test." At most, therefore, the panel decision conflicts with the reasoning of a Fifth Circuit decision in which the holding has been reversed.

Nor does the Secretary's interpretation conflict with the recent holding in Kahawaiolaa v. Norton, 386 F.3d 1271 (9th Cir. 2004), cert. denied, 2005 WL 275254 (June 13, 2005), or any other Ninth Circuit precedent. In Kahawaiolaa, native Hawaiians challenged their exclusion from the federal acknowledgment process. The regulation challenged in Kahawaiolaa provides that acknowledgment is available "only to those American Indian groups indigenous to the continental United States * * *." 25 C.F.R. 83.3(a); 386 F.3d at 1274. In holding that the regulation reasonably interpreted the IRA's geographic scope, the court observed that "[t]here were no recognized Hawaiian Indian tribes under federal jurisdiction in 1934, nor were there any reservations in Hawaii." Kahawaiolaa, 386 F.3d at 1280; see 25 U.S.C. 473.

The State wrongly characterizes (Pet. 11) the Ninth Circuit's observation that there were no recognized Hawaiian tribes in 1934 as a "holding" that "affirmed the temporal limitation" in the IRA, *i.e.* that the IRA applies only to Tribes that were recognized and under federal recognition in 1934. Indeed, Kahwaiolaa impliedly

---

[9/] The one-half blood provision was not considered here, and accordingly there is no support for the State's claim (Br. 9) that the Tribe does not have members who meet it.

rejects the "temporal limitation" advocated by the State. The United States has never recognized a Hawaiian tribe, and when enacted, the IRA explicitly did not apply to any groups in Hawaii. 25 U.S.C. 473. The Ninth Circuit therefore considered whether the Act became applicable to such groups later, when Hawaii became a state, and concluded that it did not, based on Congressional intent and conditions in Hawaii at the time of the IRA's enactment.

Moreover, where it has addressed the definition of "Indian" on which the State relies, the Ninth Circuit has interpreted it to include members of currently recognized tribes. In Zarr v. Barlow, supra, 800 F.2d at1488, in which the Ninth Circuit invalidated a regulation limiting eligibility for certain grants to Indians of one-quarter blood degree or more, the court applied the definition in section 479 consistent with the panel decision in this case, observing that "as a person of Indian descent who is a member of a recognized tribe, Zarr qualifies [as "Indian"] under 25 U.S.C. 479." Accordingly, there is no basis for a conclusion that the panel decision conflicts with Ninth Circuit precedent.

CONCLUSION

For the foregoing reasons, the decision of the panel with respect to the interpretation of 25 U.S.C. 465 is correct and does not conflict with any decision of this Court, the Supreme Court or any other federal court of appeals. Accordingly, rehearing *en banc* is not warranted.

Respectfully submitted,

WILLIAM B. LAZARUS
JUDITH RABINOWITZ
DAVID C. SHILTON
ELIZABETH ANN PETERSON #6517
Attorneys, Env't & Nat. Res.Div.
U.S. Department of Justice
P.O. Box 23795, L'Enfant Station
Washington, D.C. 20026
(202) 514-3888

CERTIFICATE OF SERVICE

I certify that on June 13, 2005, copies of the Federal Appellees' Response to the Petition for Rehearing were served upon counsel by placing the same in the United States Mail, postage prepaid, and addressed as follows:

Neil Kelly
Assistant Attorney General
150 South Main Street
Providence, RI 02903

Claire Richards
Executive Counsel
Room 119, State House
Providence, RI 02903

Joseph Larisa, Jr.
Assistant Solicitor
One Citizens Plaza, Suite 1100
Providence, RI 02903

John F. Killoy, Jr., Esq.
74 Main Street
Wakefield, RI 02879

Anthony Gioia
Assistant United States Attorney
50 Kennedy Plaza, 8th Floor
Providence, RI 02903

_____
Elizabeth Ann Peterson
Attorney, Department of Justice

ADDENDUM