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No.

In the Supreme Court of the United States

KATHLEEN SEBELIUS, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL., PETITIONERS

v.

SOUTHERN UTE INDIAN TRIBE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Each year since 1998, Congress has imposed an express statutory cap on the annual appropriations available to the Secretary of Health and Human Services to pay tribal contract support costs under the Indian Self-Determination and Education Assistance Act (ISDA), 25 U.S.C. 450 *et seq.*

The question presented is whether the Secretary must accept an Indian tribe's proposal for a new ISDA self-determination contract, notwithstanding that the Secretary lacks sufficient appropriations under the statutory cap to pay the tribe's proposed contract support costs.

PARTIES TO THE PROCEEDING

Petitioners are Kathleen Sebelius, Secretary of Health and Human Services; Regina M. Benjamin, Surgeon General; Yvette Roubideaux, Director, Indian Health Service; Richie Grinnell, Director, Albuquerque Area Office, Indian Health Service; Indian Health Service; Public Health Service; and the Department of Health and Human Services.

Respondent is the Southern Ute Indian Tribe.

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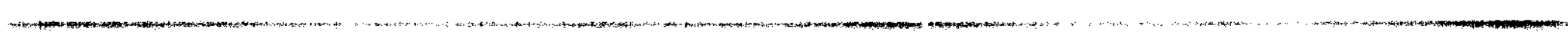

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PETITION FOR A WRIT OF CERTIORARI

The Solicitor General, on behalf of the Secretary of Health and Human Services, *et al.*, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-27a) is reported at 657 F.3d 1071. The opinion of the district court (App., *infra*, 32a-45a) is unreported. An earlier opinion of the district court (App., *infra*, 46a-69a) is reported at 497 F. Supp. 2d 1245.

JURISDICTION

The judgment of the court of appeals was entered on September 19, 2011. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Appropriations Clause, U.S. Const. Art. I, § 9, Cl. 7, provides: "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law."

Relevant provisions of the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450 *et seq.*, and the Anti-Deficiency Act, 31 U.S.C. 1341 *et seq.*, are reproduced in the appendix to this petition (App., *infra*, 70a-91a).

STATEMENT

1. a. Congress enacted the Indian Self-Determination and Education Assistance Act (ISDA), 25 U.S.C. 450 *et seq.*, to promote "effective and meaningful participation by the Indian people in the planning, conduct, and administration" of federal programs and services for Indians. 25 U.S.C. 450a(b). The Act "direct[s]" the Secretary of the Interior or the Secretary of Health and Human Services, as appropriate, to enter into a "self-determination contract" at the "request of any Indian tribe" to permit a tribal organization to administer federal programs that the Secretary would otherwise provide directly for the benefit of Indians.[1] 25 U.S.C. 450f(a). The Act thus generally permits a tribe, at its

[1] The Act defines the term "tribal organization" to include, *inter alia*, the governing body of an Indian tribe or any organization controlled or chartered by the tribe. See 25 U.S.C. 450b(*l*).

request, to step into the shoes of a federal agency and administer federally funded services.

The basic parameters of an ISDA contract are set out in the Act. See generally 25 U.S.C. 450*l*(c) (model agreement). As originally enacted in 1975, the ISDA required the Secretary to provide the amount of funding that the "Secretary would have otherwise provided for the operation of the programs" by the federal government during the fiscal year in question. 25 U.S.C. 450j-1(a)(1). This amount is sometimes called the "secretarial amount." In 1988, Congress amended the ISDA to require that, in addition to the secretarial amount, the Secretary must also provide an amount for the tribe's "contract support costs," which are costs that a tribe must incur to operate a federal program but that the Secretary would not incur. See Indian Self-Determination and Education Assistance Act Amendments of 1988, Pub. L. No. 100-472, § 205, 102 Stat. 2292 (25 U.S.C. 450j-1(a)(2)). Such costs may include certain direct costs of administering a program, such as costs of complying with special audit and reporting requirements, and indirect costs, such as an allocable share of general overhead. See 25 U.S.C. 450j-1(a)(3)(A). Because this amount may vary over time, the sums to be provided are negotiated on an annual basis and memorialized in annual funding agreements. See 25 U.S.C. 450j(c)(2); 25 U.S.C. 450*l*(c) (model agreement § 1(b)(4) and (f)(2)). Once a tribal contractor has received a particular amount of funding under a self-determination contract, however, that amount "shall not be reduced by the Secretary in subsequent years" except in specified circumstances. 25 U.S.C. 450j-1(b)(2).

The Secretary is generally required to enter into a self-determination contract upon receiving a proper re-

quest from an Indian tribe. See 25 U.S.C. 450f(a)(1) ("The Secretary is directed, upon the request of any Indian tribe by tribal resolution, to enter into a self-determination contract or contracts[.]"). The tribe's proposal must specify, *inter alia*, the federal program or service to be administered and the amount of funds requested, including any funding for contract support costs. 25 C.F.R. 900.8(h); see 25 U.S.C. 450f(a)(2). Within 90 days of receiving the proposal, the Secretary must "approve the proposal and award the contract" unless the Secretary makes a "specific finding" that the proposal falls within one of five enumerated grounds for declining the request. See 25 U.S.C. 450f(a)(2)(A)-(E).

If the Secretary declines a tribe's request for a contract, the Secretary must give a written explanation of the reasons for declination, assist the applicant in overcoming the stated objections if possible, and provide an opportunity for a hearing on the record and for an administrative appeal.[2] 25 U.S.C. 450f(b). Alternatively, in lieu of an administrative appeal, the tribe may "initiate an action in a Federal district court and proceed directly to such court" to challenge the Secretary's declination decision. 25 U.S.C. 450f(b)(3); see 25 U.S.C. 450m-1(a) (granting district courts original jurisdiction over suits against the Secretary under the ISDA, including claims for "injunctive relief to reverse a declination finding").

b. This case concerns what happens when a tribe submits a proposal for a new ISDA contract that the Secretary cannot approve because Congress has not

[2] The Secretary must also approve "any severable portion" of the declined proposal, "subject to any alteration in the scope of the proposal that the Secretary and the tribal organization agree to." 25 U.S.C. 450f(a)(4).

authorized sufficient appropriations to pay the tribe's contract support costs.

Federal funding under ISDA contracts, like funding for other federal programs, is contingent upon the availability of appropriations. Congress made that contingency explicit in several places in the Act. While the ISDA generally requires the Secretary to approve an Indian tribe's request for a self-determination contract, for example, Congress provided that "[t]he amounts of such contracts shall be subject to the availability of appropriations." 25 U.S.C. 450j(c). Similarly, the Act provides that "[e]ach self-determination contract" must "contain, or incorporate by reference," certain standard terms. 25 U.S.C. 450*l*(a)(1). Those prescribed terms specify that a lack of sufficient appropriations may negate the duty of either party to perform. See 25 U.S.C. 450*l*(c) (model agreement § 1(b)(4) and (c)(3)). And in a provision entitled "Reductions and increases in amount of funds provided," Congress specified that:

> Notwithstanding any other provision in this [Act], the provision of funds under this [Act] is subject to the availability of appropriations and the Secretary is not required to reduce funding for programs, projects, or activities serving a tribe to make funds available to another tribe or tribal organization under this [Act].

25 U.S.C. 450j-1(b). The ISDA thus expressly contemplates the possibility that the appropriations authorized by Congress may be inadequate to "make funds available" for a particular "tribe or tribal organization," even when funding is available for others.

2. The Indian Health Service (IHS), an agency within the Department of Health and Human Services,

provides health care services for approximately two million American Indians and Alaska Natives belonging to more than 500 tribal entities. According to agency data, more than half of the IHS's funding for Indian health programs is administered by tribal organizations under ISDA self-determination contracts. The Secretary funds such contracts, like other agency programs, from the lump-sum appropriation provided for the Department each fiscal year (FY) by Congress.

a. In *Cherokee Nation* v. *Leavitt*, 543 U.S. 631 (2005) (*Cherokee*), citing a lack of available appropriations, the IHS paid only a portion of the contract support costs that it had promised to two tribal contractors under the ISDA in FYs 1994 through 1997. The tribes brought suit against the Secretary to recover the unpaid balance. The government argued, *inter alia*, that it had no further obligation to the tribes because the Secretary had obligated the remaining funds from the Department's annual appropriation to other tribes and for important federal administrative purposes. *Id.* at 641-642.

This Court rejected those arguments and held that the Secretary could properly be held liable for breach of contract. See *Cherokee*, 543 U.S. at 636-647. Noting that the IHS did "not deny that it [had] promised to pay the relevant contract support costs," *id.* at 636, this Court agreed with the tribes that the government "normally cannot back out" of a contract on the basis of insufficient appropriations, "as long as Congress has appropriated sufficient legally unrestricted funds to pay the contracts at issue." *Id.* at 637. The appropriations acts for the years in question, the Court emphasized, "contained no relevant statutory restriction," *ibid.*, and the agency had available "*other* unrestricted funds, small in amount but sufficient to pay the claims at is-

sue," *id.* at 641. Consequently, the ISDA's proviso that all payments are "subject to the availability of appropriations," 25 U.S.C. 450j-1(b), did not excuse the government's breach: "Since Congress appropriated adequate unrestricted funds here," that contingency was irrelevant. *Cherokee*, 543 U.S. at 643.

b. After the fiscal years at issue in *Cherokee*, Congress began to impose express statutory caps on the appropriations authorized to pay contract support costs under the ISDA. See *Arctic Slope Native Ass'n* v. *Sebelius*, 629 F.3d 1296, 1300 (Fed. Cir. 2010), petition for cert. pending, No. 11-83 (filed July 18, 2011). Congress has imposed such a cap in every annual appropriations act for the IHS since FY 1998.[3]

For the period at issue in this case, for example, from a total appropriation of approximately $2.63 billion for the IHS in FY 2005, Congress specified that, "notwithstanding any other provision of law," "*not to exceed $267,398,000*" was authorized to be spent on contract support costs under the ISDA. See Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, 118 Stat. 3084 (2004) (emphasis added). After budgetary rescissions included in the same Act, the net appropriation to the

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[3] See Pub. L. No. 105-83, 111 Stat. 1543, 1583 (FY 1998); Pub. L. No. 105-277, 112 Stat. 2681, 2681-278 to 2681-279 (FY 1999); Pub. L. No. 106-113, 113 Stat. 1501, 1501A-181 to 1501A-182 (FY 2000); Pub. L. No. 106-554, 114 Stat. 2763, 2763A-214 (FY 2001); Pub. L. No. 107-63, 115 Stat. 414, 456 (FY 2002); Pub. L. No. 108-7, 117 Stat. 11, 260-261 (FY 2003); Pub. L. No. 108-108, 117 Stat. 1241, 1293 (FY 2004); Pub. L. No. 108-447, 118 Stat. 2809, 3084 (FY 2005); Pub. L. No. 109-54, 119 Stat. 499, 539-540 (FY 2006); Pub. L. No. 110-5, 121 Stat. 8-9, 27 (FY 2007) (continuing resolution); Pub. L. No. 110-161, 121 Stat. 1844, 2134-2135 (FY 2008); Pub. L. No. 111-8, 123 Stat. 524, 735-736 (FY 2009); Pub. L. No. 111-88, 123 Stat. 2904, 2945-2946 (FY 2010); Pub. L. No. 112-10, 125 Stat. 102-103, 153 (FY 2011) (continuing resolution).

IHS for contract support costs in FY 2005 was $263,683,179.[4] See App., *infra*, 8a n.3; C.A. App. 237. It is undisputed that this sum, which represented a decrease from the previous year's appropriation, left the Secretary with "a shortfall in funds to pay [contract support costs] under existing contracts."[5] App., *infra*, 8a.

3. Respondent is a federally recognized Indian tribe. App., *infra*, 47a. In January 2005, respondent submitted to the IHS a proposal for a new self-determination contract to operate the Southern Ute Health Center, a federally funded health clinic. *Id.* at 48a; see *id.* at 7a. The IHS, however, had already "allocated its entire fiscal year 2005 [contract support cost] appropriation to existing contracts." *Id.* at 8a. This left no funds remaining under the statutory appropriations cap to fund new contracts, such as respondent's proposed contract to run the Southern Ute Health Center. *Ibid.*; see 25 U.S.C. 450j-1(b)(2) (prohibiting the Secretary from reducing funding under existing ISDA contracts except in enumerated circumstances).

As the agency reviewed respondent's contract proposal, IHS officials repeatedly expressed concern that, if the contract were approved, the Secretary would be unable to pay respondent's contract support costs. See

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[4] See Pub. L. No. 108-447, § 501, 118 Stat. 3111-3112 (rescinding 0.594% of the IHS's budget authority in FY 2005); *id.* § 122, 118 Stat. 3348 (additional rescission of 0.8%).

[5] In FY 2004, the IHS received a statutorily capped net appropriation of $267,398,046 for ISDA contract support costs. See Department of the Interior and Related Agencies Appropriations Act, 2004, Pub. L. No. 108-108, Tit. II, 117 Stat. 1293 ("not to exceed $270,734,000" for contract support costs); *id.* Tit. III, § 344, 117 Stat. 1318 (rescission of 0.646%); Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, 118 Stat. 457 (further rescission of 0.59%).

App., *infra*, 7a-8a. In a February 2005 letter to respondent, for example, the IHS stated that, although the agency was still reviewing the tribe's proposal, "[i]t is important to point out now * * * that the Congress failed to add any new money to the [contract support cost] appropriation this year and therefore * * * the payment of any amounts ultimately negotiated for" respondent's contract support costs would "be subject to the availability of funding at some future time." C.A. App. 105-106. Negotiations between the parties continued for several months.[6] Although the parties reached resolution on a variety of matters, see App., *infra*, 48a-52a, no agreement could be reached regarding funding for contract support costs.

In June 2005, following this Court's decision in *Cherokee*, the IHS informed respondent that the agency would decline the proposed contract unless respondent accepted contract language stipulating that the Secretary was not required to provide funding for contract support costs. App., *infra*, 8a-9a. Respondent refused to accept that condition, asserting that the Secretary "has a statutory duty" to fund a tribe's contract support costs under the ISDA. *Id.* at 54a. Respondent then submitted an amended contract proposal that expanded the range of functions that the tribe proposed to assume at the Southern Ute Health Center. *Id.* at 55a. The amended proposal included a proposed start date of October 1, 2005. *Id.* at 15a. Further negotiations between the parties failed to resolve the impasse.

On August 15, 2005, the IHS declined respondent's contract proposal in both its original and amended

[6] Respondent consented to several extensions of the ISDA's 90-day deadline for the Secretary to act on a contract proposal. App., *infra*, 7a n.2; see 25 U.S.C. 450f(a)(2).

forms. App., *infra*, 9a; see C.A. App. 200-204 (declination letter). The agency explained that, although the Secretary desired to cooperate with respondent to transfer responsibility for operating the Southern Ute Health Center, respondent had refused to recognize that funding for contract support costs "is not available, and that it is not known if such [funding] will become available in the future." *Id.* at 201. Because the Secretary could not fund the contract, the agency concluded, it was "not able to award" the contract.[7] *Ibid.*

4. Respondent filed this suit in the United States District Court for the District of New Mexico to challenge the Secretary's declination decision. App., *infra*, 9a; see 25 U.S.C. 450f(b)(3) and 450m-1(a). Respondent contended that a lack of available appropriations is not a valid ground on which the Secretary may decline a contract under the ISDA. *Ibid.* The government responded that the ISDA does not require the Secretary to promise to pay funds that Congress has not authorized to be expended and that, under the circumstances of this case, entering into the contract would have violated both the Appropriations Clause, U.S. Const. Art. I, § 9, Cl. 7, and the Anti-Deficiency Act, 31 U.S.C. 1341. See App., *infra*, 62a.

a. In June 2007, the district court granted summary judgment in favor of respondent. App., *infra*, 46a-69a. The court acknowledged that, in light of this Court's decision in *Cherokee*, the Secretary's hesitation to enter into a contract that the agency could not afford to fund was "not unreasonable." *Id.* at 66a. The court con-

[7] The IHS cited a number of additional grounds for declining respondent's proposal, such as the misidentification of certain expenses as allowable contract support costs. C.A. App. 201-204. Those grounds are no longer at issue.

cluded, however, that the ISDA "clearly limits" the Secretary's ability to decline an Indian tribe's contract proposal to the five specific circumstances enumerated in 25 U.S.C. 450f(a)(2). App., *infra*, 61a. In declining respondent's proposal, the Secretary had relied on Section 450f(a)(2)(D), which permits declination when "the amount of funds proposed under the contract is in excess of the applicable funding level for the contract, as determined under section 450j-1(a) of this title." The district court concluded that this provision was inapplicable because nothing in the cross-referenced provision, 25 U.S.C. 450j-1(a), makes the "applicable funding level" contingent on the availability of appropriations to fund the contract. App., *infra*, 62a.

b. Following the district court's decision, the parties agreed to enter into a self-determination contract in the form of the model agreement set forth in the ISDA. App., *infra*, 34a. But the parties could not agree on contract language concerning the IHS's obligation to pay contract support costs. *Id.* at 38a-39a. The Secretary proposed language specifying that, in view of the lack of available appropriations, the IHS presently owed respondent $0 for contract support costs, but that respondent's need for such funding would be calculated, placed on the agency's shortfall report, and paid if and when funding became available. *Ibid.* Respondent contended that it was entitled under the ISDA to language promising full payment of contract support costs. *Id.* at 39a.

In October 2007, the district court resolved this dispute in favor of the Secretary.[8] App., *infra*, 32a-45a.

[8] The district court also resolved a dispute between the parties concerning the start date of the contract. See App., *infra*, 34a-38a. The court of appeals affirmed the district court's judgment on that question, see *id.* at 24a-27a, and it is not at issue here.

The court reasoned that respondent "should have no objection to the inclusion of terms in the annual funding agreement which reflect the practical ramifications of the current statutory cap on available appropriations." *Id.* at 42a. Absent such terms, the court explained, "it is abundantly clear that the Government will be forced to enter into a contract which it must breach up front." *Ibid.* The court rejected respondent's argument that the government's proposed contract language conflicted with the terms of the Act, explaining that the ISDA expressly contemplates that annual funding agreements will specify the "time and method of payment." *Id.* at 39a (quoting 25 U.S.C. 450*l*(c) (model agreement § 1(f)(2)(A)(i))). The court accordingly directed the parties to finalize a self-determination contract that included the government's proposed language for contract support costs. *Id.* at 44a. Respondent appealed that order, but its appeal was dismissed on the ground that the district court's order was not final. *Id.* at 11a-12a; see *Southern Ute Indian Tribe* v. *Leavitt*, 564 F.3d 1198 (10th Cir. 2009).

c. The parties ultimately agreed on the terms of a self-determination contract with an effective date of October 1, 2009, subject to either side's appeal of the district court's rulings. App., *infra*, 12a. The district court then entered a final order directing, *inter alia*, that the Secretary place respondent's calculated need for contract support costs on the IHS's shortfall list for future funding if and when sufficient appropriations became available. *Id.* at 30a-31a.

5. The court of appeals affirmed in part and reversed in part. App., *infra*, 1a-27a.

a. The court of appeals agreed with the district court that the ISDA does not permit the Secretary "to

decline a contract on the basis that available appropriations are insufficient to fund the contract." App., *infra*, 14a-15a. The court reasoned that, under the "plain text" (*id.* at 16a) of the declination criteria in 25 U.S.C. 450f(a)(2), the "applicable funding level" for an Indian tribe's contract support costs "must be evaluated irrespective of whether the appropriations available to [the Secretary] are sufficient to pay that amount." App., *infra*, 17a. The ISDA, the court concluded, "plainly does not authorize [the Secretary] to decline [respondent's] contract proposal on the basis that it lacked sufficient appropriations."[9] *Ibid.*

b. The court of appeals next reversed the district court's ruling that the annual funding agreement between the parties could "reflect the practical ramifications of the current statutory cap on available appropriations" (App., *infra*, 42a) by stipulating that the Secretary presently owed $0 in funding for contract support costs, but that such costs would be paid in the future if available appropriations permitted. *Id.* at 20a-24a. The court ruled that such an agreement "violates the ISDA." *Id.* at 22a. The court held that an Indian tribe under the ISDA "is entitled to a contract specifying the full statutory amount" of contract support costs and "cannot be forced to enter into a self-determination contract waiving its entitlement to full [contract support cost] fund-

[9] The court of appeals also stated that the government could not properly decline the contract for lack of available appropriations in FY 2005 because respondent's amended contract proposal had an effective date of October 1, 2005—*i.e.*, the first day of FY 2006. See App., *infra*, 15a-16a. But the court concluded that it "need not decide" whether the FY 2006 appropriation was sufficient in light of its holding that, as a matter of law, the Secretary may not decline an ISDA contract because of inadequate appropriations. *Id.* at 17a n.6.

ing." *Id.* at 24a. The court added that "[a]ny disputes about whether funds are, in fact, available" to pay respondent's contract support costs "remain open and litigable." *Ibid.*

REASONS FOR GRANTING THE PETITION

This case presents the question whether the Secretary must accept an Indian tribe's proposal for a new self-determination contract under the Indian Self-Determination and Education Assistance Act (ISDA), 25 U.S.C. 450 *et seq.*, notwithstanding that the Secretary lacks sufficient funds under an express statutory appropriations cap to pay the tribe's proposed contract support costs. That question is closely related to the questions presented in two petitions currently pending before the Court. See *Ramah Navajo Chapter* v. *Salazar*, 644 F.3d 1054 (10th Cir. 2011), petition for cert. pending, No. 11-551 (filed Oct. 31, 2011) (*Ramah Navajo*), and *Arctic Slope Native Ass'n* v. *Sebelius*, 629 F.3d 1296 (Fed. Cir. 2010), petition for cert. pending, No. 11-83 (filed July 18, 2011) (*Arctic Slope*). Both cases present the question whether the government is required to pay all of the contract support costs incurred by a tribal contractor under the ISDA, notwithstanding that Congress has imposed an express statutory cap on the appropriations available to pay such costs and the Secretary cannot pay all contractors' claims without exceeding the statutory cap. The Solicitor General filed the petition for a writ of certiorari in *Ramah Navajo* and has not opposed the petition in *Arctic Slope*. See Gov't Br., *Arctic Slope*, *supra*, at 9-11.

The Tenth Circuit's decision below expressly builds upon that court's earlier ruling in *Ramah Navajo*, see, *e.g.*, App., *infra*, 3a, 7a, 19a, and reflects many of the

same fundamental errors of law discussed in the government's petition for a writ of certiorari in that case. In particular, the decision below rests on the same mistaken premise that the ISDA guarantees "full" funding of a tribe's contract support costs. Compare *id.* at 24a, with Gov't *Ramah Navajo* Pet. at 19-23 (explaining that the ISDA does not confer on tribal contractors an unqualified right to "full" funding of contract support costs).

Although the Tenth Circuit in the decision below purported to leave open the question whether "funds are, in fact, available to pay" respondent's contract support costs, App., *infra*, 24a, the court of appeals had previously held in *Ramah Navajo* that the government is liable for *all* contract support costs for *all* tribal contractors under the ISDA as long as Congress has appropriated sufficient funds to pay any *one* contractor considered in isolation. See *Ramah Navajo*, 644 F.3d at 1068-1071. Because that minimal threshold is satisfied here, the apparent effect of the Tenth Circuit's ruling below, together with its prior ruling in *Ramah Navajo*, is to require the Secretary to enter into a contract to pay money that Congress has not authorized to be paid, yet to subject the government to immediate liability if it does not make the statutorily unauthorized payments. If that is the correct way to understand the interaction of the two decisions, Congress could not have intended that result, as the governing provisions of the ISDA confirm. See Gov't *Ramah Navajo* Pet. at 19-23.

If the Court grants the petition for a writ of certiorari in *Ramah Navajo* or *Arctic Slope*, this Court's decision would likely require reconsideration or reversal of the Tenth Circuit's decision in this case. Accordingly, the Court should hold this petition pending its disposi-

tion of *Ramah Navajo* and *Arctic Slope*, including any subsequent proceedings on the merits, and then dispose of the petition as appropriate in light of its disposition of those cases.

CONCLUSION

The petition for a writ of certiorari should be held pending the Court's disposition of *Salazar* v. *Ramah Navajo Chapter*, No. 11-551, and *Arctic Slope Native Ass'n* v. *Sebelius*, No. 11-83, and then disposed of as appropriate.

Respectfully submitted.

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