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Environment and Natural Resources Division

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March 5, 2009

By Hand Delivery (to Court)
By U.S. Mail (to counsel)

Clerk of the Court
United States Court of Appeals
for the Federal Circuit
717 Madison Pl., NW
Washington, DC 20439

Re: *Wolfchild v. United States*, No. 2008-5018; Argued December 5, 2008,
before Circuit Judges Rader, Bryson, and Prost

Dear Clerk:

Pursuant to Fed. R. App. P. 28(j), Defendant-Appellant United States submits this response to Plaintiffs-Appellees' February 25, 2009 letter. Plaintiffs submit the Supreme Court's decision in *Carcieri v. Salazar* as supplemental authority. *Carcieri* is irrelevant here.

Carcieri addressed for whom the Secretary of the Interior may acquire land in trust under the 1934 Indian Reorganization Act (IRA). That authority of the Secretary is not at issue here, and nothing in *Carcieri* sheds any light whatsoever on whether the Appropriations Acts (passed in 1888, 1889, and 1890) created a trust for the loyal Mdewakanton and their lineal descendants.

Plaintiffs argue that the Court should "adopt" what they call an "order" by Commissioner John Collier. Plaintiffs seem to assert that, because the Supreme Court in *Carcieri* found Collier's statements regarding the IRA to be an "unusually persuasive source," this Court should also find Collier's statements with respect to the Appropriations Acts unusually persuasive. But in finding Commissioner Collier's views to be entitled to respect, the Supreme Court emphasized that he was the principal author of the IRA and responsible for the inclusion of the very language at issue in *Carcieri*. Slip op. at 10 n.5. In stark contrast, Collier was six years old when the last of the three Appropriations Acts at issue here was passed. There is no basis for this Court to find Collier's views of the Appropriation Acts particularly persuasive or to make the leap that Plaintiffs suggest -- in effect, that every opinion Collier issued is as authoritative as his comments about the IRA. In any event, Collier's statement on which Plaintiffs rely says nothing about whether

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the Appropriations Acts created a trust for the loyal Mdewakanton and their lineal descendants. It, like *Carcieri*, does not help Plaintiffs.

Finally, Plaintiffs' discussion of the history of lands acquired in trust for the federally recognized Prairie Island and Lower Sioux Indian Communities is totally irrelevant to the issues presented here -- whether the Appropriations Acts created a trust for the loyal Mdewakanton and their lineal descendants, or if those acts created a trust, whether the 1980 Act terminated it.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'A. Avila', written over a horizontal line.

Aaron P. Avila