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Ada E. Deer, Assistant Secretary for Indian Affairs is pleased to announce that on June 3, 1996 the Department of Justice on behalf of the Department of the Interior petitioned the United States Supreme Court to review the Eighth Circuit, U.S. Court of Appeals holding that Sections of the Indian Reorganization Act of 1934, (IRA) (25 U.S.C. 461 et seq.), is unconstitutional (69 F.3d 878).

Section 5 of the IRA provides in part that:

The Secretary of the Interior is authorized, in his discretion, to acquire, through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights, or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments, whether the allottee be living or deceased, for the purpose of providing land for Indians.

The IRA was enacted to reverse the disastrous massive loss of land suffered by the Indian tribes resulting from the Indian General Allotment Act (24 Stat. 388, (1887)). In the petition for writ of certiorari the Solicitor General for the Department of Justice states "The IRA's 'overriding purpose was to establish machinery whereby Indian tribes would be able to assume a greater degree of self-movement, both politically and economically."' The petition for Certiorari requests that the Supreme Court grant the petition, (1) vacate the holding of the court of appeals, and remanded the case to the district court. It further requests that the district court remand the matter to the Secretary of the Interior for reconsideration of his administrative decision - the placing of the 91 acres of fee land into trust for the Lower Brule Sioux Tribe, or (2) in the alternative, that the Supreme Court grant plenary review and set the case for briefing and argument. "Approximately nine million acres of land has been taken into trust since the IRA was passed. The declaration that this law is unconstitutional is potentially devastating to the Indian community. It attacks the ability of Indian tribal governments to govern, because it places at issue tribal jurisdiction which involves law enforcement, taxation, land-use regulation, housing, fishing and hunting rights," said Ms. Deer.

"The federal government has a trust responsibility to Indian tribes and mu t protect one of the most basic tribal 'rights," aid Ms. Deer. "American Indians have always had a special connection with the land. American Indians lost approximately 90 million acres of land after the Allotment Act was passed. The IRA was passed specifically to correct this problem and provide a basis for Indian tribal governments to form an economic foundation upon which to become self-sufficient." In 1990 the Lower Brule Sioux Tribe purchased 91 acres of fee land [land which was in private non-Indian ownership] to develop an industrial park. Under Section 5 of the IRA the Tribe requested that the Bureau of Indian Affairs place this land "in trust" for their benefit. The Bureau, following requirements of the Code of Federal Regulations (25 CFR 151), notified the local non-Indian government of the request. On July 13, 1992 the State of South Dakota and City of Oacoma filed a complaint in the United States District Court for the District of South Dakota. Only after the land had been taken into trust, was the issue of the constitutionality of Section 5 of the IRA raised when the State and city filed an amended complaint. The district court ruled that this challenge was without merit. However, the court of appeals reversed the district court's decision which in effect sustained the proposition that Section 5 was unconstitutional.