No. _____

In The

Supreme Court Of The United States

JO-ANN DARK-EYES
Petitioner,

v.

COMMISSIONER OF REVENUE SERVICES
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE CONNECTICUT SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

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May 15, 2006

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QUESTION PRESENTED

1. Whether the lands identified as "private settlement lands" in the Connecticut Indian Land Claims Settlement Act, 25 U.S.C. §§ 1751-1760, were set aside in that act for the Mashantucket Pequot Tribal Nation and become Indian County upon purchase by the Mashantucket Pequot Tribal Nation?

PARTIES TO THE PROCEEDING

The petitioner, who was the plaintiff-appellant below, is Jo-Ann Dark-Eyes, an enrolled member of the Mashantucket Pequot Tribal Nation.

The respondent, who was the defendant-appellee below, is the State of Connecticut Commissioner of Revenue Services.

The following amici filed briefs with the Connecticut Supreme Court: The Towns of Ledyard, North Stonington and Preston, Connecticut; the Mashantucket Pequot Tribal Nation; and Connecticut State's Attorney Kevin T. Kane of the New London, Connecticut, Office of the Connecticut State's Attorney.

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The opinion of the Connecticut Supreme Court is reported at 276 Conn. 559 (2006), and it is reprinted in the Appendix to this Petition ("Pet. App.") at 1a. The opinion of the Connecticut Superior Court is unreported but available at 2003 Conn. Super. LEXIS 3063, and it is reprinted at Pet. App. 40a.

JURISDICTION

The opinion of the Connecticut Supreme Court was entered on January 3, 2006. Reconsideration was denied and notice sent on February 15, 2006. *See* Pet. App. 53a. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

STATUTES INVOLVED

This case implicates the Connecticut Indian Claims Settlement Act, 25 U.S.C. §§ 1751-1760[1]; 1982 Conn. Acts 82-31 (Spec. Sess.)[2]; Conn. Gen. Stat. § 47-63[3]; 18 U.S.C. § 1151[4]; 25 U.S.C. § 465[5]; and 25 U.S.C. § 1729.[6]

STATEMENT OF THE CASE

In 1993, the Mashantucket Pequot Tribal Nation ("Tribe") purchased property located at 59 Coachman Pike, Ledyard, Connecticut ("Property"). *Jo-Ann Dark-Eyes v. Comm'r of Revenue Services*, 276 Conn. 559, 563 (2006). The Tribe subsequently submitted an application to have the

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[1] *See* Pet. App. at 54a-64a.
[2] *See* Pet. App. at 65a-67a.
[3] *See* Pet. App. at 68a.
[4] *See* Pet. App. at 69a.
[5] *See* Pet. App. at 70a-71a.
[6] *See* Pet. App. at 72a.

Property formally taken into trust by the federal government pursuant to 25 U.S.C. § 465. That application was granted, and the Property formally was taken into trust on August 25, 1998. *Jo-Ann Dark-Eyes*, 276 Conn. at 563-64.

Petitioner Jo-Ann Dark-Eyes, an enrolled member of the Tribe, resided at the Property from November 1, 1993, through September 30, 1998. *Id.* at 563. In 1996, 1997 and 1998, Ms. Dark-Eyes earned income as a member of the Tribal Council. *Id.* at 564. For each such taxable year, Ms. Dark-Eyes claimed an exemption from Connecticut state income tax on the ground that she was an enrolled member of the Tribe who resided in, and earned her income from, Indian Country. *Id.*

Respondent Commissioner of Revenue Services ("Commissioner") ruled that Ms. Dark-Eyes was not entitled to any exemption for the period prior to August 25, 1998, because, in his view, the Property did not become "Indian Country" until it was formally taken into trust by the federal government. *Id.* at 565.

Ms. Dark-Eyes appealed from the Commissioner's decision, first to the Connecticut Superior Court and then to the Connecticut Supreme Court. *Id.* at 567-68. In order to determine whether the Property constituted Indian Country prior to August 25, 1998, the Connecticut Supreme Court applied the standards set forth in *Alaska v. Native Vill. of Venetie Tribal Gov't*, 522 U.S. 520 (1998), and *Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe*, 498 U.S. 505 (1991), to the legislation by which Congress granted the Tribe federal recognition and a federal reservation. *See* Connecticut Indian Land Claims Settlement Act, 25 U.S.C. §§ 1751-1760 (hereinafter, "the Federal Settlement Act").

Pursuant to *Venetie* and *Citizen Band*, in order for land to constitute Indian Country under 18 U.S.C. § 1151(a) (formal or informal reservation) or 18 U.S.C. § 1151(b) (dependent Indian community), such land must: (1) have been "set aside" by the federal government for use by the tribe; and (2) be under federal superintendence. The Connecticut Supreme Court concluded that the Federal Settlement Act did not render the Property "set aside" for the Tribe and, therefore, was not capable of rendering the Property Indian County within the meaning of 18 U.S.C. § 1151. Having determined that the Property was not "set aside," the Connecticut Supreme Court did not reach the issue of the existence of federal superintendence.

Further appellate review is warranted in this case. In concluding that the Property did not constitute Indian Country until it formally was taken into trust on August 25, 1998, the Connecticut Supreme Court decided a question that should be, but has not been, settled by this Court, i.e., the contours of the circumstances that must exist in order for land to have been "set aside" within the meaning of 18 U.S.C. § 1151. In addition, the Connecticut Supreme Court resolved the Tribe's rights under the Federal Settlement Act in a manner that is not consistent with, and cannot be reconciled with, relevant decisions of this Court. In particular, rather than applying the well established Indian canons of construction; s*ee Montana v. Blackfeet Tribe of Indians,* 471 U.S. 759, 766 (1985)*; Winters v. United States*, 207 U.S. 564, 576 (1908); *Choate v. Trapp,* 224 U.S. 665, 675 (1912); to the Federal Settlement Act -- an enactment that is both specific to the Tribe and directed to Tribal sovereignty, self-determination and self-governance -- the Connecticut Supreme Court narrowly construed that enactment in favor of the Commissioner and concluded, in effect, that funds, rather than land, had been set aside. *See Jo-Ann Dark-Eyes*, 276 Conn. at 596-97. Ms. Dark-Eyes' Petition for a Writ of Certiorari should be granted.

A. Factual Background

Prior to 1983, the Tribe was not a federally recognized tribe. The Tribe did not have a federal reservation under either a treaty with the United States or an Act of Congress. *See* Hearings on S. 2294 and S. 2719 Before the Select Comm. on Indian Affairs, 97th Cong. 2d Sess. ("Senate Hearing") 26 (1982). Rather, the land that the Tribe owned in Ledyard, Connecticut was recognized as a reservation only under Connecticut law. *See id.*; Conn. Gen. Stat. § 47-63. Hereinafter, such land is referred to as the "state reservation land."

In 1976, the Tribe instituted litigation claiming title to public and private lands located in Ledyard on the theory that, in 1855, such lands had been conveyed away from the Tribe in violation of the Indian Trade and Intercourse Act of 1790. *See* 25 U.S.C. § 1751(a); Senate Hearing at 62-63 and 67. In order to remove the cloud that this litigation placed on title to privately owned lands throughout Ledyard, the State of Connecticut and the owners of certain privately held land devised an agreement with the Tribe ("Agreement"). The Agreement was intended to provide the Tribe with federal recognition and *a federal reservation* -- comprised not only of the state reservation land *but also of, inter alia, swamp lands known as the "Cedar Swamp" and approximately eight hundred acres of privately owned, undeveloped land* -- in exchange for extinguishment of the Tribe's claims of title to lands located in Ledyard. *See* 25 U.S.C. §§ 1751(b)-1751(d); Senate Hearing at 59-60.

The owners of the undeveloped lands that were the subject of the Agreement agreed to the proposed purchases of those lands, at fair market values yet to be determined, for inclusion in the Tribe's reservation. Senate Hearing at 59, 60, 74 and 76. It was agreed, however, that no owner would

be forced to sell. *Id.* at 59. Based on an independent appraisal obtained by the State of Connecticut, the parties to the Agreement determined that the cost of acquisition of the land in question would be in the vicinity of $900,000. *Id.* at 78. The undeveloped lands that the parties to the Agreement contemplated would be purchased and included in the newly created federal reservation were outlined in red on a certain map ("Map") filed with the Connecticut Secretary of the State. *See* 25 U.S.C. § 1752(3)(A). The Property is within the outlined area. *Jo-Ann Dark-Eyes*, 276 Conn. at 577.

Both the Connecticut Legislature and Congress enacted legislation to implement the Agreement. *See* 25 U.S.C. § 1751(d) ("the parties to the lawsuit and others interested in the settlement of Indian lands claims within the State of Connecticut have reached an agreement which requires implementing legislation by the Congress of the United States and the Legislature of the State of Connecticut"). The legislation that the Connecticut Legislature enacted to implement the Agreement ("the State Settlement Act") primarily was concerned with inclusion of the state reservation land in the new federal reservation. *See* 1982 Conn. Acts 82-31 (Spec. Sess.). In contrast, the legislation that Congress enacted to implement the Agreement (i.e., the Federal Settlement Act) is directed to federal recognition of the Tribe; creation of the federal reservation; expansion of that reservation through purchases of privately owned lands within the area outlined in red on the Map; and extinguishment of the Tribe's claims of title to land in Ledyard. *See* 25 U.S.C. §§ 1751-1760.

In the State Settlement Act, the term "reservation" is defined to mean both land owned by the Tribe and land held in trust for the Tribe by the United States. *See* State Settlement Act, § 1. Significantly, the term "reservation" expressly includes (but is not limited to) those lands "*conveyed to . . . said tribe* as part of the settlement of its

land claims in the town of Ledyard." *Id.* (emphasis added). The State Settlement Act confirms the Tribe's title to the state reservation land. *Id.*, § 2. It also authorizes the Governor to convey to the Tribe two additional parcels, comprising approximately twenty acres, that historically had been Tribal burial grounds, for inclusion in the Tribe's federal reservation. *Id.*, § 3.

Like the State Settlement Act, the Federal Settlement Act was intended to ratify and effectuate the Agreement. *See* Senate Hearing at 59. As the Commissioner stated in his brief to the Connecticut Supreme Court, the boundaries of the federal reservation, as contemplated in the Agreement, are "*fixed with precision*" in the Federal Settlement Act. Def.s' Br. at 12 (emphasis added); *see* 25 U.S.C. § 1753(3); *Connecticut ex rel. Blumenthal v. Babbitt*, 26 F. Supp. 2d 397, 401 (D. Conn. 1998), *rev'd sub nom. Connecticut ex rel. Blumenthal v. U. S. Dep't of Interior*, 228 F.3d 82 (2d Cir.), *cert. denied*, 532 U.S. 1007 (2001). The area within such boundaries, which is denominated as the "*settlement lands,*" consists of: (1) the state reservation land and Tribal burial ground land identified in the State Settlement Act (title to which was held by the Tribe in fee, not by the United States in trust for the Tribe); *see* 25 U.S.C. §1752(4) (emphasis added); and (2) certain privately owned land, denominated as "*private settlement lands*"; *see* 25 U.S.C. § 1752(3) (emphasis added). The private settlement lands consist of Cedar Swamp and the privately owned undeveloped land, as outlined in red on the Map, that the parties to the Agreement contemplated would be purchased for inclusion in the Tribe's federal reservation. *See* 25 U.S.C. § 1752(4). Again, the Property is within the area outlined in red on the Map.

In order to enable the Tribe to make the contemplated purchases of the private settlement lands, Congress established a $900,000 fund ("Trust Fund") and directed that it be held in trust by the Secretary of the Interior for the

benefit of the Tribe. *See* 25 U.S.C. § 1754; Senate Hearing at 59 (statement of Sen. Dodd: "[a] federal trust [was] established to purchase 800 acres"); *id.* at 60 (statement of Sen. Weicker: "[f]ederal trust would be established to reimburse those landowners who choose to sell . . . 800 acres would be transferred to the Tribe'); *id.* (statement of Governor O'Neill: "a settlement has been reached by the state, the property owners and the [Tribe] . . . All of the . . . property owners have agreed to transfer approximately 800 acres . . . to the [Tribe] . . . *the land will be held in trust by the U.S. government*") (emphasis added); *id.* at 61 (testimony of Rep. Gejdenson: "We have put together an 800-acre tract . . . *to give the [Tribe] a reservation*") (emphasis added); *id.* at 63 (statement of Rep. Gejdenson: the bill "establishes a Federal trust for purposes of land acquisition as agreed to in the [Agreement]").

Significantly, in reaching the Agreement that was ratified in the Federal Settlement Act, it was the right to expand the federal reservation through purchases of the private settlement lands, and not the $900,000 Trust Fund, that was of paramount importance. *See* Senate Hearing at 59 (statement of Sen. Dodd: "The [Tribe has] agreed to give up all of their aboriginal claims to land in exchange for a federal trust *established to purchase 800 acres*") (emphasis added); *id.* at 60 (statement of Sen. Weicker: ("[*The Tribe] is not seeking money; they want a viable land base* . . . A Federal trust of $900,000 would be established to reimburse those landowners who choose to sell . . . *800 acres would be transferred to the Tribe*") (emphasis added); *id.* at 63 (statement of Rep. Gejdenson: "The [Agreement] reached between the property owners and the Tribe is an agreement to *transfer approximately 800 acres* . . . to the Tribe") (emphasis added) *id.* at 67 (testimony of Tribal Council Chairman Richard Hayward: "[we] have reached an [Agreement] that will pay the current landowners for underdeveloped property. . . [the bill] will not only settle the

[T]ribe's land claims once and for all but will enable the [T]ribe *to plan for its overall land base*") (emphasis added); *id.* at 62 (testimony of the Tribe's attorney Thomas Tureen: "The $900,000 figure is the result of an appraisal we had done . . . We estimate that the *acquisition of the land in question* will cost approximately $900,000") (emphasis added); *id.* at 78 (testimony of Attorney Jackson King, Jr.: "[The Tribe does] not want money. *They are not looking for money. What they are looking for is a larger land base*") (emphasis added).

Consistent with the foregoing, the Federal Settlement Act did not merely provide the Tribe with federal recognition and $900,000 in exchange for extinguishment of the Tribe's claims of title to land in Ledyard. Rather, § 1754(b) of the Federal Settlement Act addressed four issues: "Expenditure of the [Trust] Fund, private settlement lands, economic development plan and acquisition of land and natural resources." *See* 25 U.S.C. § 1754(b). Under § 1754(b), the Secretary of the Interior was not only authorized, but also directed, to expend the Trust Fund at the request of the Tribe. 25 U.S.C. § 1754(b)(1). There were, however, certain initial restraints on such expenditures. In particular, expenditures of money from the Trust Fund had to be made in accordance with an approved plan to promote the economic development of the Tribe. 25 U.S.C. § 1754(b)(3)(A). In addition, until January 1, 1985, at least $600,000 was to be dedicated solely to acquisitions of private settlement lands. 25 U.S.C. § 1754(b)(2). Only after January 1, 1985, could whatever remained of the $600,000 initially dedicated solely to acquisitions of private settlement lands be provided to the Tribe for use in accordance with an economic development plan. 25 U.S.C. § 1754(b)(3)(A).

It is significant that nothing, nothing whatsoever, in the Federal Settlement Act precluded the Tribe from including acquisitions of private settlement lands in an

economic development plan formulated under 25 U.S.C. § 1754(b). Indeed, the legislative history of the Federal Settlement Act reveals that Congress contemplated that the Tribe might use funds dispersed to the Tribe under an economic development plan to purchase such lands. *See* S. Rep. No. 97-596, at 12 (1982) ("It is also understood that monies disbursed pursuant to the economic development plan may be used to acquire additional settlement lands"). In other words, if some or all of the Trust Fund money that initially was dedicated solely to acquisition of private settlement lands had remained available on January 1, 1985, the Tribe still could have used that money to purchase the Property (assuming that the owner remained willing to sell), and any such purchase would have caused the Property to become trust land by operation of law. *See* 25 U.S.C. §1754(b)(7).

It also is significant that, in order to encourage the owners of private settlement lands to agree to sell their lands for inclusion in the federal reservation, Congress provided that that transfers of private settlement lands under 25 U.S.C. § 1754(b) would be deemed to be involuntary conversions and therefore eligible for special treatment under § 1033 of the Internal Revenue Code. *See* 25 U.S.C. § 1754(c). This provision of the Federal Settlement Act is similar, but not identical, to that found in the Maine Indian Claims Settlement Act, 25 U.S.C. §§ 1721-1735 (hereinafter, "Maine Settlement Act"). As noted in the legislative history of the Federal Settlement Act, unlike § 1754(c) of that act, which does not limit § 1033 treatment to private settlement lands purchased with settlement funds, under the Maine Settlement Act, such status is limited to purchases completed with federal settlement funds. *See* 25 U.S.C. § 1729 (codifying Pub. L. No. 96-420, § 10). As also noted in the legislative history, *apart from that distinction,* § 1754(c) of the Federal Settlement Act was to be interpreted consistently with § 1729 of the Maine Settlement Act. *See* S. Rep. No.

97-596 at 14 (1982); S. Rep. No. 98-43, at 10 (1983); S. Rep. No. 98-222 at 15 (1983). This is unequivocal evidence that Congress did not intend to limit the application of the Federal Settlement Act to private settlement lands purchased with Trust Fund monies prior to January 1, 1985. Rather, the Federal Settlement Act was intended to allow the Tribe also to expand its newly created federal reservation through purchases of private settlement lands with funds from other sources.

Significantly, §1754(b)(7) of the Federal Settlement Act provides that "[l]ands . . . acquired under this subsection which are located within the settlement lands *shall* be held in trust by the United States for the benefit of the Tribe." 25 U.S.C. § 1754(b)(7) (emphasis added).[7] As acknowledged in the Respondent Commissioner's brief to the Connecticut Supreme Court, under this provision, once acquired, land becomes trust land by operation of law. Def.s' Br. at 12. In other words, in recognition of the fact that the Agreement represented a carefully crafted resolution of the interests of all concerned, private settlement lands acquired under the Federal Settlement Act come under federal superintendency without resort to the formal process, set forth in 25 U.S.C. §

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[7] In § 1754(b)(5) of the Federal Settlement Act, Congress limited any duties owed by the federal government with respect to funds deposited into the Trust Fund. In particular, Congress provided that, with one exception, any obligations with respect to both the funds themselves *and any proceeds the Tribe might obtain with such funds* would terminate when funds were expended on behalf of the Tribe. 25 U.S.C. § 1754(b)(5); *see* S. Rep. No. 97-596 at 13 (1982) ("as portions of the settlement fund are disbursed to the proper tribal officials, the United States shall have no further responsibility for the use of those funds disbursed"). The exception to this extinguishment of all obligations related to the Trust Fund applies to private settlement lands purchased with Trust Fund money. *Id.* In other words, in extinguishing any trust obligations arising from the Trust Fund itself, 25 U.S.C. § 1754(b)(5) does not also eliminate any trust obligations that may have arisen, by operation of law, under 25 U.S.C. § 1754(b)(7).

465, for acquiring trust status at the discretion of the Department of Interior. Indeed, the State of Connecticut, impliedly recognizing that the Agreement and Federal Settlement Act embody such a resolution of the competing interests, has not opposed applications by the Tribe to have lands that it acquires within the area outlined in red on the Map formally taken into trust under 25 U.S.C. § 465. *See* Def.'s Br. at 13.

B. State Court Proceedings

It is true that the Federal Settlement Act itself does not expressly address the status of private settlement lands that might be purchased with funds from a source other than the Trust Fund. Nonetheless, the language and legislative history of the Federal Settlement Act provide compelling evidence that the Federal Settlement Act was intended to: (1) create a federal reservation that encompassed the state reservation land and the tribal burial ground; (2) grant the Tribe a right to expand the size of that reservation through consensual purchases of privately owned lands located within the area specifically outlined in red on the Map; and (3) provide the Tribe with a means to exercise that right to expand its reservation to include the private settlement lands.

Despite such evidence, however, both the Connecticut Superior Court and the Connecticut Supreme Court held that the Tribe's purchase of the Property in 1993 did not render the Property Indian Country. See *Jo-Ann Dark-Eyes*, 276 Conn. at 569. In determining that, prior to August 25, 1998, the Property was not Indian Country within the meaning of 18 U.S.C. § 1151, the Connecticut Supreme Court concluded that the factors set forth in two decisions of the this Court, *Venetie,* 522 U.S. at 520, and *Citizen Band,* 498 U.S. at 505, should be applied to the Federal Settlement Act. *See Jo-Ann Dark-Eyes*, 276 Conn. at 584. In *Venetie,* a case that involved whether certain land constituted a

dependent Indian community within the meaning of 18 U.S.C. § 1151(b), as well as in *Citizen Band,* a case that involved whether certain land held in trust constituted an informal reservation with the meaning of 18 U.S.C. § 1151(a), this Court concluded that, in order for the lands in question to constitute Indian Country, such land must: (1) have been set aside for the tribe by the federal government; and (2) be under federal superintendence. *See Venetie,* 522 U.S. at 530-31; *Citizen Band,* 498 U.S. at 511; *see also United States v. Roberts*, 185 F. 3d 1125, 1133 (10th Cir.), *cert. denied*, 529 U.S. 1108 (2000).

The Connecticut Supreme Court began its analysis of whether the Property constituted informal reservation land/a dependent Indian Community within the meaning of 18 U.S.C. § 1151 by considering whether the Property had been "set aside" for the Tribe under the Federal Settlement Act. *See Jo-Ann Dark-Eyes*, 276 Conn. at 584, 587-88 and 590-91; *Venetie,* 522 U.S. at 530-31. After noting that "the precise circumstances necessary to satisfy a set aside have not been clearly delineated by the courts; *Jo-Ann Dark-Eyes*, 276 Conn. at 588 (emphasis added); the Connecticut Supreme Court reasoned that, because the Federal Settlement Act did not mandate that the private settlement lands be purchased for inclusion in the reservation and instead allowed the owners of the private settlement lands to decline to sell, the lands within the area outlined in red on the Map were not "set aside" for the Tribe.[8] *See id.* at 593-96. Thus, rather than following the longstanding Indian canons of construction, *see Montana v. Blackfeet Tribe of Indians,* 471 U.S. at 766; *Winters v. United States*, 207 U.S. at 576; *Choate v. Trapp,* 224 U.S. at 675, when it interpreted the

[8] Having determined that the Property was not "set aside," the Connecticut Supreme Court did not reach the issue of the existence of federal superintendence.

Federal Settlement Act -- an enactment that is both specific to the Tribe and directed to tribal sovereignty, self-determination and self-governance -- the Connecticut Supreme Court adopted a narrow reading in favor of the Commissioner and concluded, in effect, that funds, rather than land, had been set aside for the Tribe.

The decision of the Connecticut Supreme Court was released on January 3, 2006. Reconsideration was denied and notice sent on February 15, 2006. Pet. App. at 53a.

REASONS FOR GRANTING A WRIT OF CERTIORARI

The decision of the Connecticut Supreme Court is inconsistent with, and, indeed, cannot be reconciled with decisions of this Court regarding interpretation of federal treaties, executive orders and statutes that are directed to tribal sovereignty, self determination and self governance. This Court long has recognized that the Indian canons of construction, which are rooted in the unique trust relationship between the United States and Indians, govern the interpretation of such enactments. *See, e.g., County of Yakima v. Confederated Tribes & Bands of Yakima Indian Nation*, 502 U.S. 251, 269 (1992); *Montana v. Blackfeet Tribe*, 471 U.S. at 766; *Oneida v. Oneida Indian Nation*, 470 U.S. 226, 247 (1985); *Winters v. United States*, 207 U.S. at 576; *Choate v. Trapp,* 224 U.S. at 675; *compare Chickasaw Nation v. United States*, 534 U.S. 84 (2001) (Indian canons did not resolve whether a provision of the Indian Gaming Regulatory Act, legislation of general applicability, created a exemption to taxation under the internal revenue code). Under the Indian canons, enactments directed to tribal sovereignty, self determination and self governance are to be construed liberally in favor of establishing Indian rights, and

any ambiguities in construction are to be resolved in favor of the Indians. *See Montana*, 471 U.S. at 766.

It cannot be gainsaid that the Federal Settlement Act is such an enactment. Indeed, the Federal Settlement Act having arisen out of the longstanding dereliction of the federal government's trust obligations to the Western Pequot Indians; *see* Senate Hearing at 29; it is difficult to envision a more compelling case for application of the Indian canons. Yet, despite the overwhelming evidence that the Agreement and Federal Settlement Act were intended to: (1) create a federally recognized reservation that encompassed the state reservation land and the tribal burial ground; (2) grant the Tribe a right to expand the size of that reservation through consensual purchases of the private settlement lands; and (3) provide the Tribe with means to exercise its right to expand its reservation to include the private settlement lands, the Connecticut Supreme Court -- after noting the dearth of authority regarding the contours of circumstances required to create a "set aside" -- concluded that the Federal Settlement Act did not render the private settlement lands outlined in red of the Map "set aside" within the meaning of 18 U.S.C. § 1151, and that consequently, the Tribe's purchase of the Property in 1993 did not render the Property Indian Country. *Jo-Ann Dark-Eyes*, 276 Conn. at 569. The decision of the Connecticut Supreme Court cannot be reconciled with this Court's decisions regarding construction of federal enactments, such as the Federal Settlement Act, that are directed to matters of tribal sovereignty, self determination and self governance.

CONCLUSION

For all of the foregoing reasons, Ms. Dark-Eyes' Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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