10-1973

# Morton v. Ruiz

Lewis F. Powell Jr.

Deny

Await Decision

Might request briefs on possible mootness issue, or I could deny.

DISCUSS

On further study, I'm inclined tentatively to vote Sec. of Int. is right — Congress didn't appropriate funds — case still may not be c/w

I would now deny. The SG's policy ~~is~~ on the merits is very unattractive and there really is no reason fpr ~~the~~ this Court to have its docket so continually cluttered reviewing circuit court Indian cases.....DENY JHW

~~I think the SG's policy is~~ unattractive on the merits. There are needy Indians both on and off reservations. Nonetheless, I am not convinced that the regulation is ~~is~~ contrary to the wording of the stattute. In the absence of such a conflict, the regulation must stand.

~~The~~ The remand on possible grounds of mootness is an ~~a~~ attractive ~~a~~ alternative. Welfare ~~p~~ suits can become moot when the plaintiff is no longer ~~e~~eligible for relief. This is not like the voting cases where the ~~e~~ inevitable passing of an election date has ~~c~~ created the "capable of repetition yet evading review" doctrine.* Preliminary Memo

~~REMAND IF POSSIBLE FOR HEARING ON MOOTNESS JHW~~

March 23, 1973 Conference
List 1, Sheet 2

No. 72-1052

MORTON (Sec'y of Interior) — Cert to CA 9 (Barnes, Kilkenny; Merrill, dissenting) — Timely

v.

RUIZ

1. This is an Indian case and involves the validity, under the Snyder Act, of the Secretary's regulation limiting Indian welfare benefits to Indians living on reservations. The USDC D. Arizona (judge undisclosed) held the regulation valid and dismissed respondent's class action; the CA, with one judge dissenting, reversed, holding plaintiffs of benefits to be unlawful.

2. FACTS: Respondents are members of the Papago Indian Tribe who live in Ajo, Arizona about 15 miles from the

Sorry - I see the ~~SG~~ CA9 has already ruled on the mootness point. Still, the mootness question bothers me. Request supplemental briefs. JHW

Papago Indian Reservation. While on strike against the Phelps-Dodge Company in 1967, respondent (the husband) applied for welfare from the state, but was refused because of the state rule against welfare payments to striking workers. Respondents then applied for general assistance benefits from the Bureau of Indian Affairs, but the Bureau turned down their application on the ground that its regulations make such benefits available only to reservation Indians. 66 Bureau Manual § 3.1. Respondents then brought this action in federal district court. The DC granted the Government's motion for summary judgment without opinion, but, as noted, the CA reversed, holding the Bureau's regulation inconsistent with the Snyder Act's command that the Bureau "expend such moneys as Congress may from time to time appropriate, for the benefit, care and assistance of the Indians throughout the United States . . . ."

The Snyder Act provides in pertinent part:

> The Bureau of Indian Affairs, under the supervision of the Secretary of the Interior, shall direct, supervise, and expend such moneys as Congress may from time to time appropriate, for the benefit, care, and assistance of the Indians throughout the United States for the following purposes:
> General support and civilization, including education.

The Appropriation Act for the Bureau for the year in question provides, in part:

> BUREAU OF INDIAN AFFAIRS
>
> EDUCATION AND WELFARE SERVICES
>
> For expenses necessary to provide education and welfare services for Indians, either directly or in

> cooperation with States and other organizations, including payment (in advance or from date of admission), of care, tuition, assistance, and other expenses of Indians in boarding homes, institutions, or schools; grants and other assistance to needy Indians; maintenance of law and order, and payment of rewards for information or evidence concerning violations of law on Indian reservations or lands; and operation of Indian arts and crafts shops; $126,478,000.

3. CONTENTIONS:

a. The SG's main argument is that the Snyder Act -- standing alone-- is nothing more than a broad enabling act that permits the Bureau to set up a system of aiding Indians with monies that are later appropriated for their benefit by Congress. Under this view (which is supported by the legislative history of the Act, cited in the petition, at 7-10), the CA's conclusion that the Bureau regulation is inconsistent with the "throughout the United States" language is just wrong, since the Act delineates only the broadest outlines of the Bureau's authority without in any way attempting to dictate how particular monies are to be spent. Respondents argue that although the Snyder Act may only be an enabling act, it nonetheless is meant to direct the Bureau to spend any appropriated funds for Indians "throughout" the country and not just those on reservations.

b. The second argument of the SG is that the particular appropriation acts involved here were intended to apply only to reservation Indians and that, therefore, the

Bureau's regulation is not inconsistent with those Acts. The 1968 Appropriation Act itself makes no distinction, but merely states that certain funds are appropriated for "grants and other assistance to needy Indians." But the SG maintains (1) this Act was passed against the backdrop of the Bureau's contested regulation; and (2) that at the hearings before both houses of Congress the Bureau's appropriation requests were couched, as follows: "General assistance will be provided to needy Indians on reservations who are not eligible for public assistance under the Social Security Act . . . ." (Identical requests were made in the preceding 5 years.) Respondents counter with several arguments that were made by the CA. Most important is that Congress has enacted numerous measures (to be handled by the Bureau) that apply without regard to the residence of Indians (including scholarships, economic and business loans, and public health measures) and that it is inconsistent with the congressional policy generally in this area to exclude some Indians from appropriated welfare funds simply because he or she lives outside a reservation. The CA noted with some contempt that the Bureau never hesitates to cite the total Indian population of this country when seeking appropriations, but is now attempting to single-out and ignore off-reservation Indians when it comes to needed welfare payments.

4. DISCUSSION: There is no question that the Bureau has the authority to give aid to off-reservation Indians.

(Certainly the scant legislative history of the appropriations acts cannot be taken as limiting the plain import of the statutory language chosen.) Nonetheless, to uphold the CA's decision, it is necessary to conclude that the regulation limiting welfare payments to on-reservation Indians is inconsistent with the appropriations acts. This seems like a difficult burden, although arguably it is unreasonable to ignore completely needy off-reservation Indians who have no other place to turn for assistance (the precise predicament of reservation Indians).

There is an additional problem with this case that neither party mentions. At the time the complaint was filed, Ramon Ruiz was on strike and out of work. In his motion for leave to proceed IFP he states that his present take-home pay is "not in excess of . . .$75.00 per week, and that because of illness my income has recently been much less." Arguably, this case is moot, since respondent is apparently working and would be ineligible for Bureau assistance in any event. This point was raised and brushed aside by the CA in a footnote: "The Secretary does not raise the issue of mootness on this appeal; in any event, we note that the "continuing controversy" limitation on the mootness doctrine applies here." I suppose that it is possible that the timing problems in such welfare cases could make the issue here one that is capable of repetition, yet evading review. But that is not at all clear. The SG obviously wants this issue adjudicated, but a remand for

mootness could help avoid a possibly unpleasant decision on the merits. (Supplemental briefs on mootness could be requested.)

There is a response.

3/13/73 Hoffman CA Op in Petn.

ME

Conf. 4/20/73

*Court* CA - 9 ..... *Voted on* ....., 19...

*Argued* ....., 19... *Assigned* ....., 19... No. 72-1052

*Submitted* ....., 19... *Announced* ....., 19...

ROGERS C. B. MORTON, SECRETARY OF THE INTERIOR, Petitioner

vs.

RAMON RUIZ, ET UX.

1/29/73 Cert. filed.

Grant

| | HOLD FOR | CERT. | | JURISDICTIONAL STATEMENT | | | | MERITS | | MOTION | | ABSENT | NOT VOTING | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | G | D | N | POST | DIS | AFF | REV | AFF | G | D | | | |
| Rehnquist, J. | | ✓ | | | | | | | | | | | | |
| Powell, J. | | | ✓ | | | | | | | | | | | |
| Blackmun, J. | | ✓ | | | | | | | | | | | | |
| Marshall, J. | | ✓ | ✓ | | | | | | | | | | | |
| White, J. | | ✓ | ✓ | | | | | | | | | | | |
| Stewart, J. | | | ✓ | | | | | | | | | | | |
| Brennan, J. | | | ✓ | | | | | | | | | | | |
| Douglas, J. | | | ✓ | | | | | | | | | | | |
| Burger, Ch. J. | | ✓ | | | | | | | | | | | | |

November 3, 1973 Owens

No. 72-1052 Morton v. Ruiz

This case presents a messy statutory interpretation question for which no absolutely clear answer appears. This may be one of those instances in which everyone involved is looking to the Court for the definitive ruling that Congress has, due to the vagaries and intricacies of the appropriations process, failed to provide. In addition, the briefs leave one with the impression of ships passing in the night. However, I think the SG wins. His reading of the governing legislation looks to me more consistent with what Congress attempted to do. Furthermore, I think the SG's position makes more sense as a general policy matter.

Because this is one of the cases that you have listed on your October 23 memo as not requiring an extensive memo, what follows is conclusory. In a nutshell, the issue is whether the Secretary of the Interior (apparently through his delegate, the Bureau of Indian Affairs, or BIA) is required to extend general assistance benefits to Indians without regard to their residence or whether the Secretary may restrict those benefits to Indians living on reservations and certain other defined areas. The case turns on the meaning of the Snyder Act (a permanent authorization act), as modified and/or implemented by yearly appropriation acts. The relevant appropriation act is the one for 1968, although the immediately preceding and succeeding appropriation acts look to be the same.

The Snyder Act provides (see SG's br. at 2-3), in relevant part, that the BIA

> . . . shall direct, supervise, and expend such moneys as Congress may from time to time appropriate, for the benefit, [redacted] care, and assistance of the Indians throughout the United States for the following purposes:
>
> General support . . . (Emphasis supplied.)

The 1968 appropriations act (see SG's br. at 3-4) appropriates $126,478,000 for "expenses necessary to provide education and welfare services for Indians . . . " (with no indication of locality) as well as for, among other things, "grants and other assistance to needy Indians . . ." (again with no indication of locality).

On the basis of the underlined language in the Snyder Act and on the fact that the appropriations act does [redacted] not by its terms limit assistance payments to a particular locality, the Indians argue that the BIA is under a statutory mandate to provide assistance to Indians wherever they live. They also argue that clouds of confusion emerge from the legislative history as to what the BIA has told the Congress about the scope of BIA jurisdiction, that many BIA programs (apparently other than the assistance program at issue in this case) have historically gone off the reservations, that occasionally even the program under scrutiny in this case has gone off the reservations, that a BIA [redacted] manual provision restricting assistance to the reservations is outside the scope of the Snyder Act, and, finally, that if the assistance is not allowed to go off the reservations, there will be a deprivation of equal protection.

Before turning to the SG's arguments, note the precise wording of the language of the Snyder Act at issue. The Indians choose to read it as though it said the BIA "shall" spend the Bureaus's monies for the benefit of Indians residing anywhere in the states. They argue that that imposes a mandatory obligation on the BIA to spend across the land. But isn't the language equally susceptible to a reading that the BIA is under a mandate only when Congress appropriates monies that are to be spent nationwide? When Congress does not make a nationwide appropriation, is their any mandatory instruction to the BIA in the Snyder Act?* When Congress does not make a nationwide appropriation, isn't it implicit in the Act that the BIA has discretoin with regard to the expenditure of funds? I suppose it depends on how you read the meaning of the comma immediately after the word "appropriate" in the above quote from the Act. The point is not critical to the appropriate resolution of the case, because I think the SG wins even if you adopt the Indians' reading of the literal meaning of the Act.

The SG's first argument is quite persuasive, by my lights. He says that the Act was designed to cure a previously

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*The SG obviously thinks not, but he bases his argument on the legislative history with regard to the procedural improvements the Snayder Act was meant to accomplish (an argument I think the Indians fail to meet). I think the SG might also have considered taking the Indians on on the face of the Snyder Act as well.

existing flaw in the appropriations process for funding the BIA. Prior to the Snyder Act, there was no general authorization authority for Indian affairs. Congressmen simply put desired Indian spending items into the appropriations acts. This left the latter subject to procedural points of order in the House, since any Congressman can challenge an appropriations item as out of order if it is not based on a previously passed authorization act. (See SG's br. at 7-12; amicus br. of Calif. Indian Legal Services at 7-10). If no point of order challenge is made, an appropriated item passes the House despite the absence of supporting language in an authorization act, although this is generally considered a messy way to do business. (I'm sure you know a great deal more about this than I do.) Apparently at the time that the appropriations authority for Indian affairs was shifted from an Indian committee to another House committee, members of the abandoned committee expressed their pique by raising points of order. The result was the Snyder Act. If the SG is right (and the Indians fail to take him on on this point), the Snyder Act is nothing more than the authorization shell into which Congress can, by appropriation acts, pour money, which then cannot be challenged by points of order. Thus, what really counts is the meaning of the appropriations acts passed since the Snyder Act. If they do not mandate a nationwide expenditure of assistance monies, the Indians lose no matter what the Snyder Act says, or appears to say, on its face.

Turning to the appropriations acts, one is, unsurprisingly, confronted with an absence of explicit language about the localities in which the money at issue is to be spent. The Indians are able to cite substantial confusion in miscellaneous pieces of legislative history about what the BIA thinks is jurisdiction is (like any good bureaucracy, the BIA has apparently said what it thought it needed to on various occasions to protect is budget before Congress), about how assistance money has in fact been spent at times in the past and with regard to certain tribes, about how other programs have been run, and about how many Indians near reservations live in conditions similar to those on many reservations (which are abominable places). But the Indians are unable to meet head-on the SG's argument that with regard to the precisely relevant appropriations acts, Congress has appropriated in the face of BIA requests for assistance funds that specify that the monies will be spent to aid needy Indians "on reservations . . . ." (SG's br. at 13). It is my primitive understanding in the appropriations area that, where Congress says nothing explicitly to the contrary, it is the language of the budget request of the agency that carries the greatest weight--and here that language clearly supports the position of the SG. When you couple that with the 2 decade old language of the BIA manual (SG's br. at 4: eligibility of assistance program limited to Indians on reservations) and with the fact that Congress gave the BIA less than requested for the program at issue, it seems to me clear that the SG prevails.

The Indians argue that the BIA manual language is unsupported by the Snyder Act. That seems to me to miss the point that, properly construed, the Snyder Act is an enabling act (in the SG's language)--an act that requires implementation by a corresponding appropriations act before it has operative effect. Furthermore, it seems to me to miss the point that what really counts here is the Congressional purpose in the relevant appropriations act. When you consider the BIA budget request that Congress had before it when it enacted the relevant appropriations act, the apparent Congressional purpose does not appear to support the interpretation favored by the Indians.

As a matter of policy, I also prefer the SG's position. No one carries a brief for the BIA these days. But we seem to be dealing with a case of limited welfare funds, and someone has to make an allocation decision. The BIA seems to be that someone, and its allocation decision is not nonrational. Off reservation Indians can utilize the welfare programs of the states, as supported in part by federal funds. On reservation Indians apparently must turn exclusively to the BIA (what an awful prospect). It should also be noted that no one argues in this case that Congress cannot direct the BIA to extend this program off-reservation at any time Congress wills it.

I will not belabor you with an extensive dismissal of the Indians' equal protection arguments. I will simply note that they do not prevail under the governing lower tier standard of review.

No. 72-1052 MORTON v. RUIZ Indian welfare case. Argued 11/5/73

Reverse

The Snyder Act (a general authorization) authorizes ~~Congress~~ Bureau of Ind. Affairs (BIA) to expend such money as Congress shall appropriate for benefit of Indians "throughout the U.S.". This is a general authorization act & is not in itself limited to Reservations.

Pursuant to this authorization, BIA (Sec of Interior) ~~sect~~ requests appropriations for "general assistance" --- to needy Indians on reservations who are not eligible for public assistance under the Social Security Act ---".

I conclude that Snyder Act is a gen. authorization only & that Congress has not appropriated funds for all Indians. I also think the BIA has acted reasonably in concluding that on-Reservation Indians are likely to be most needy. See J. Marrell's dissent. Pet. 31.

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Sachse (for SG)

Under Social Security Act there are 4 "categorical" types of assistance. But there is no program to provide money for able bodied persons who are ~~categorically~~ chronically out of work (this supposes me).

Gov't undertook in 1950 to provide a form of income maintenance for Indians on Reservations.

Q is whether legislation (for supplemental welfare) here applies to off-reservation Indians & if not, is it const.?

9 to 9 write, read transcript of what Sachse says

Okla exception: In Okla there are no Reservations, but Tribal organizations still exist & Indians still live on Trust land.

Sockse (56 - cont).

Okla + Alaska are special situations. Apart from these, the BIA does what it can with funds available for Indians who live on trust land (or allotted land) near reservations & where the reservation population has de facto spilled over to adjoining or nearby land owned by Govt & held in trust for Indians or allotted to Indian use. But in view of the limitation in appropriation request + grant BIA could not treat all Indians everywhere alike.

Govt has greatest resp. on Reservations & BIA thinks the greatest need also is on Reservation.

Woods (for Resp)

The GA program is distinct + different from the Social Security program.

Resps live 15 miles from Reservation.

" were excluded solely because of their residence.

Very little work available on Reservation — Resps had to live where work was available. Some Indians do commute to jobs, + they are eligible

Secretary should draw Regulations defining eligible Indians regardless of where they live.

Wooden (cont.)

Decision of CA 9 that "all Indians" must be treated alike may go too far.

No. 72-1052, MORTON v. RUIZ

Conference November 7, 1973

The Chief Justice Passed

Referred to BIA's manual.

Leg. history shows Congress' awareness of BIA's construction of Snyder Act.

"Throughout U.S." language if applied literally, would include all Indians regardless of where they live or degree of assimilation with American society.

Would divide "pie" among larger number of persons.

Cites a Law Review which I've not read.

Dandridge is relevant.

If we Reverse we must reach Const. issue unless we remand to CA 9 on this issue.

Said he remains in doubt on statutory issue

Douglas, J. Affirm

Majority judges are "hard-nosed" & if they could decide for Indians, this is enough.

Brennan, J. Affirm

Read statements from Brief in 1962 & 1964 by spokesmen for BIA as to including Indians "on or near" Reservations. Also same thing said in '67 - 380,000 Indians "on or near"; & again in 1968 same language was used & finally in 1971 this was repeated.

(But what does "near" mean.)

(Brennan makes good argument based on these statements, but C/J responds that the statements were not necessarily limited to Snyder Act. Might relate to other aid)

I should check

Stewart, J. Affirm (Tentative)

Difficult to get "handle on case. BIA has a big "slush" fund with no guide line.

CA 9 was wrong in construing Snyder Act as controlling — this was simply an "enabling act". CA 9 wrong in applying act to all Indians.

But the manual has not been published & Indians have had no notice.

"near" is imprecise word, but would affirm & write a narrow opinion construing "near" as meaning at least where people. But would not approve CA 9's opinion.

No BIA rules or regulations — big opportunity for graft.

White, J. Affirm

Disagree with CA 9 – can't apply Act to entire U.S.

Entirely reasonable to allow BIA – responsible agency – to distribute funds on reservations. But BIA

Does not read statements by officials (cited by Brennan) as relating to Snyder Act funds. They apply to all types of aid.

Yet, BIA has not limited the S/Act aid to Reservations – there has been a crazy quilt.

Agree with Powell that we should affirm but on a limited opinion that has to be worked out.

Doesn't reach E/P issue

Marshall, J. Affirm

Take care of all the Indians!

Blackmun, J. Affirm

This is a class action. Harry asked Brennan "who comes within the class"; Bill guessed it related only to Indians in community, but if an opinion is written

Was inclined to Reverse but if class is confined very narrowly, will join an affirmance

Powell, J. Reverse

On basis of what Congress has done (Snyder Act & Appropriations Act), I am reasonably clear that the funds were appropriated for Reservation Indians.

Difficulty is that BIA has apparently exercised a rather loose discretion as to how to distribute funds.

But this affords no ground for rewriting the legislation & appropriation acts here in this Court.

If we reach E/P issue, I could remand for a more thorough development of facts. Or I would sustain validity on Dandridge.

Rehnquist, J. Reverse

Agree substantially with me – but case is so many he may change.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 29, 1974

RE: No. 72-1052 - Morton v. Ruiz

Dear Harry:

I agree.

Sincerely,

Bill

Mr. Justice Blackmun

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

January 30, 1974

Dear Harry:

Please join me in your opinion for the Court in 72-1052, Morton v. Ruiz, et ux.

WOD

William O. Douglas

Mr. Justice Blackmun

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 30, 1974

Re: No. 72-1052, Morton v. Ruiz

Dear Harry:

Please join me. As to whether the agency, rather than the District Court, should be given the first chance to define "near," I shall leave to you.

Sincerely,

Byron

Mr. Justice Blackmun

Copies to Conference

January 31, 1974

No. 72-1052 Morton v. Ruiz

Dear Harry:

Your careful opinion persuades me to change my vote.

Please join me.

Sincerely,

Mr. Justice Blackmun

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 31, 1974

Re: No. 72-1052 - Morton v. Ruiz, et ux.

Dear Harry:

I was on the other side at conference, but you have convinced me.

Sincerely,

Mr. Justice Blackmun

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 31, 1974

Re: No. 72-1052 -- Rogers C. B. Morton v. Ruiz et ux.

Dear Harry:

Please join me in your opinion in this case.

Sincerely,

T. M.

Mr. Justice Blackmun

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

January 31, 1974

72-1052 - Morton v. Ruiz

Dear Harry,

I am glad to join your opinion for the Court in this case.

Sincerely yours,

P.S.

Mr. Justice Blackmun

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

February 14, 1974

Re: 72-1052 - Morton v. Ruiz

Dear Harry:

Please join me.

Regards,

WEB

Mr. Justice Blackmun

Copies to the Conference

| THE C. J. | W. O. D. | W. J. B. | P. S. | B. R. W. | T. M. | H. A. B. | L. F. P. | W. H. R. |
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| | | | | | | 11-19-73 | | |
| Join HAB 1/14/74 | Join HAB 1/30/74 | Join HAB 1/29/74 | Join HAB 1/31/74 | Join HAB 1/30/74 | Join HAB 1/31/74 | 1st draft 1/29/74 2nd draft 2/11/74 | Join HAB 1/31/74 | Join HAB 1/31/74 |
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