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In the
Supreme Court of the United States

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

Petitioner,

v.

RAMON RUIZ, et ux.,

Respondents.

No. 72-1052

Washington, D.C.
November 5, 1973
November 6, 1973

Pages 1 thru 44

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Harry R. Sachse, Esq.,
For the Petitioner

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments next in No. 72-1052, Rogers C. B. Morton, Secretary of the Interior v. Ramon Ruiz, et ux.

Mr. Sachse, you may proceed.

ORAL ARGUMENT OF HARRY R. SACHSE, ESQ.,

ON BEHALF OF THE PETITIONER

MR. SACHSE: Mr. Chief Justice, and may it please the Court:

This case is here on a writ of certiorari to the decision of the Court of Appeals for the Ninth Circuit. That court held essentially that a supplemental welfare benefit that the Bureau of Indian Affairs provides for Indians who live on Indian reservations and Indians who live within the jurisdiction of the Bureau of Indian Affairs in Oklahoma and Alaska must be applied, must be made available for Indians throughout the country. The court did that not on constitutional grounds but as an interpretation of the statutes under which the program is conducted.

We think that that is a misinterpretation of those statutes and that it would require the Bureau of Indian Affairs to conduct a program that Congress has not appropriated money for, and it is on that basis that we ask the Court to review the decision of the Ninth Circuit.

Now, I would like to take a minute to describe what

the program is that we are talking about.

Through the Social Security Act, there are four or five -- I think it is four types of categorical welfare assistance, aid for dependent children, aid for the blind and so forth, that under federal sponsorship are available throughout the country through the states. There is another, which is under different legislation, the unemployment insurance programs.

But what is missing from this program that is available throughout the United States is anything in the way of a general assistance program that will give money to able-bodied people who are chronically out of work. This is the issue that the country has faced in terms of -- or perhaps has failed to face, in terms of a negative income tax or some sort of income maintenance program.

Because this is missing from the federal legislation, the states have done with it pretty much as they please. Some states have fairly important income assistance programs, others do not. Some states do it on a statewide basis, others do it on county by county.

The situation became clear that in Indian reservations, where the Indian tribe itself has the basic government and where that government is under the direct supervision of the federal government, that the federal government ought to undertake this kind of income maintenance program. And it did

undertake this kind of program in a cash payment program rather than giving provisions, which had been done earlier, in the early 1950's. And this is the program that we are talking about, a program that has some flaws in it, that has worked fairly well, some people think; other people think that it tends to discourage people from going out and getting jobs. But this is the program, and the question is whether Indians who live off reservations have a right to this program under the legislation and eventually I suppose the question is whether it is constitutional to make this discrimination on the basis of residents on a reservation.

Q Suppose, Mr. Sachse, you had in this particular company the Indian who is in question here, and I suppose a number of white, Caucasians working for this same company, they are all on strike and they are all living in the same town. Under the Ninth Circuit holding, is it correct that the Indian would get some benefits that the white strikers would not?

MR. SACHSE: That is correct. The Ninth Circuit has held, as we read the opinion, that since the Bureau of Indian Affairs provides this supplemental welfare program for Indians on reservations, it must provide it for Indians everywhere, or at least the narrowest reading of the decision is it must provide it for Indians in the situation of Mr. Ruiz. That would mean Mr. Ruiz would get these benefits, whereas

strikers would not.

I would like to take a minute just to state, which we have already alluded to, and that is the situation of Mr. Ruiz here. Mr. Ruiz -- Mr. and Mrs. Ruiz, really. Mr. and Mrs. Ruiz are Papago Indians, as far as I know full-blood. They lived on the Papago Reservation until 1939 or 1940. At that time, Mr. Ruiz moved 16 miles away to a town called Ajo.

Q Ajo?

MR. SACHSE: Ajo. He moved there and got a job in the copper mines and he apparently worked steadily in those copper mines until 1967, at which time the plant went out on strike. Nobody under Arizona law, none of the striking workers were entitled to general assistance or unemployment compensation payments.

Mr. Ruiz, unable to get the Arizona payments, applied to the Bureau of Indian Affairs to see whether he could get payments there, and he was denied those payments on the basis that he did not, neither he nor his wife resided on the reservation.

Now, I would like to discuss the statutes under which the Bureau operates this program.

Q Mr. Sachse, could I interrupt you there. Suppose that this particular applicant was able to work at the mines but the reservation was right across the street, and he maintained his residence on the reservation. Would he have

been eligible under some other program at that time?

MR. SACHSE: As I understand it, he would have been eligible for this program, if he had resided on the reservation.

Q So that his white counterpart would not?

MR. SACHSE: That is correct. That is correct. It would be very much as if you had people who live in the State of New York who go to work in the State of New Jersey. The person who still lives in New York will get whatever benefits the State of New York offers, I suppose, and people who move from the State of New York and move into New Jersey then are under the -- will get whatever benefits New Jersey supplies, rather than New York.

Q Well, what is the situation as to a person who lives on a reservation, is he eligible generally for state or federal welfare type programs?

MR. SACHSE: Yes, Your Honor, he is. The law as we understand it, and as every court that has ruled on that so far has held, that an Indian is a full-fledged citizen of the United States, whether he lives on or off a reservation, and whatever welfare program that the federal government offers or that the state offers statewide would have to be available on reservations as well as off reservations. And this program --

Q I take it your opponents do not necessarily

agree with that?

MR. SACHSE: No, I think they agree with that, though you would have to ask them that.

Q It is unusual to find an Indian getting more than a white man, isn't it?

MR. SACHSE: I think it is for that reason that this case is here.

Q It is almost un-American.

Q Mr. Sachse, do these Indians pay federal income taxes on their money earned?

MR. SACHSE: On the money -- I would assume that Mr. Ruiz pays normal federal income taxes.

Q Is he subject to federal income tax?

MR. SACHSE: I think so.

Q I take it the strike is long since over?

MR. SACHSE: The strike lasted about eleven months, and it is over. On the statutory dates, I want to say first that the President, through delegation of the Secretary of the Interior and the Bureau of Indian Affairs, had very broad authority under 25 U.S.C. 2 and 25 U.S. 9 to make such rules and regulations and decisions as are necessary in this area. But the act that we are primarily concerned with here is the Snyder Act, which was passed in 1922. And I think the act is clear on its face. It is the authorization act for the Bureau of Indian Affairs to provide health, education, welfare, and

all sorts of other services to Indians wherever they live in the country.

We don't say that this act prohibits the Bureau of Indian Affairs from doing things for Indians off reservations. But I think it is quite clear that the act simply is the authorization act, it created no programs; and the legislative history is clear on this, too, that to solve points of order, that there was no authorization for the Bureau of Indian Affairs, that Congress passed this particular act. I won't burden the Court with going through what I have done in detail in my brief there.

The language of it is clear. The Bureau of Indian Affairs, under the supervision of the Secretary of the Interior, shall direct, supervise and expend such monies 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.

At the time this act was passed, there was no general support program, financial support program, either on or off Indian reservations, or in the country as a whole. Social legislation of the 1930's hadn't been passed at that time.

I think that the respondents are really reaching to take the language in that act and to say that it commands

the Secretary of the Interior to institute a welfare program, and that that welfare program must be for Indians both on and off reservations. And one I would say certainly neutral observer of this act, Mr. Wolf, who I think had some role in representing the respondents in this case, has written a very Law Review article on this subject.

MR. CHIEF JUSTICE BURGER: We will take up at that point at 10:00 o'clock in the morning, Mr. Sachse.

[Whereupon, at 3:00 o'clock p.m., the Court was adjourned, to reconvene on Tuesday, November 6, 1973, at 10:00 a.m.]

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