

The Misenño people have lived since time immemorial in what is now the Southern California megalopolis, in an area spanning parts of Los Angeles, Orange, Riverside, and San Bernardino counties. Their first contact with non-Indians was in the late 1700s, when the Spanish established (and Misenño people built) a mission within their traditional territory. Many Misenño people were baptized, and some are buried, at the mission, which kept records of these baptisms along with Misenño births, deaths, marriage, and village locations and populations. (The Misenño name comes from this historical association with the mission.)

After the mission's establishment, most Misenño people continued to live in their historic villages (some lived at the mission), which were located within the boundaries of the land area allocated to the mission by Spain. Under its policy of secularizing the missions, the Mexican government divided these lands into various private, or rancho, land grants made to individual Mexican citizens in 1838. Like most Mexican rancho grants, they had clauses excluding lands occupied by Indians and providing that the grantees could not prejudice the rights of Indians already living on those lands.

After the Treaty of Guadalupe-Hidalgo was signed to end the U.S.-Mexican War, the United States appointed John Wilson as the Indian agent for (all of) California in 1849, and Benjamin ("B.D.") Wilson (then the mayor of Los Angeles, but no known relation to John) as the sub-agent for Indian Affairs for Southern California in 1851. Though the Misenños' villages were within both officials' geographic coverage, neither of them ever mentioned the Misenños in any of their reports or other documents. The Misenños' villages were outside the land area reserved under the 1852 Treaty at the Village of Temecula (also known as Treaty K), and no Misenño leader took part in the negotiation of, or was a signatory to, this or any other of the eighteen treaties the United States signed with California Indian peoples but rejected in a secret Senate session in July 1852. A visitor to Los Angeles County in March 1852 described the Misenños' villages as "places where these Indians have raised crops, planted orchards, and grazed sheep since the early days of the mission" and noted that Misenño people provided most of the labor on the surrounding ranchos.

By 1880, only one Misenño village remained—on land to which the Anglos, a prominent Los Angeles family, held title as successors-in-interest to the original Mexican grantees. The deed transferring title did not contain the clause from the original grant excluding the Misenños' villages and protecting their rights, and the Anglos brought an action in California state court for ejectment of the Misenños. The court issued a writ of ejectment, and the sheriff removed the remaining Misenño from the village by force, in 1881.

Most Misesño people continued to live in the area around their historic villages and the mission throughout the nineteenth and twentieth centuries. They still do today. In 1982, the United States added the Misesño Band of Indians (the descendants of the Misesño removed from the village in 1881) to the list of federally recognized Indian tribes, after finding that the Misesño satisfied the criteria in 25 C.F.R. Part 83 and “exist as an Indian tribe within the meaning of federal law.” In 2005, the Band requested that the United States Secretary of the Interior acquire land in trust for the Band’s benefit near an old Misesño village site, exercising the authority set forth in the Indian Reorganization Act (“IRA”).¹ In November 2010, the U.S. Department of the Interior issued a record of decision (“ROD”), announcing it would acquire the land in trust for the Band.

Under a section titled “The existence of statutory authority for the acquisition and any limitations contained in such authority,” the ROD states that “[p]ursuant to the United States Supreme Court’s interpretation of the IRA in *Carcieri v. Salazar*, 555 U.S. 379 (2009), the Secretary must determine whether an Indian tribe was ‘under Federal jurisdiction’ in 1934, the year the IRA was enacted, before the Secretary can acquire and in trust for that tribe.” The ROD also states that the word “now” in 25 U.S.C. § 479,² which the *Carcieri* Court interpreted to mean 1934, “modifies only the phrase ‘under Federal jurisdiction’”—and that a tribe “need only be ‘recognized’ at the time of the land acquisition,” as the Misesño Band was. The ROD set forth the Interior Secretary’s finding that the Misesño Band was under federal jurisdiction in 1934—and that the acquisition was therefore lawful—based on a list of things: the provision in the 1851 Act to Ascertain and Settle Private Land Claims in the State of California requiring the commissioners appointed under the law to report to the Secretary of the Interior on various types of Indian land tenure;³ the 1891 Mission Indian Relief Act, through which Congress appointed commissioners “to arrange a just and satisfactory settlement of the Mission Indians residing in the State of California” and authorized the commissioners “to select a reservation for each band or village of the Mission Indians”

¹ 25 U.S.C. § 465 (editorially reclassified as 25 U.S.C. § 5108).

² Editorially reclassified as 25 U.S.C. § 5129.

³ Pub. L. No. 31-41, 9 Stat. 631 (1851). According to the ROD, the Misesño fit within multiple categories listed in the statute, which provides that

it shall be the duty of the commissioners to ascertain and report to the Secretary of the Interior the tenure by which the mission lands are held, and those held by civilized Indians, and those who are engaged in agriculture or labor of any kind, and also those which are occupied and cultivated by Pueblos or Rancheros Indians.

9 Stat. at 634.

in California;⁴ several Misenño children attended the Sherman Indian Boarding School in Riverside, California, in the 1920s, 1930s, and 1940s; and Misenño people received payments that were made to California Indians as a group in 1944 and 1974 under, respectively, the California Indians Jurisdictional Act⁵ and Indian Claims Commission Act.⁶

Scream Out for California (“SOFC”), a California non-profit organization that has challenged many land-into-trust acquisitions in the state, filed suit against the Interior Secretary and Department in 2013, arguing that the decision to acquire the land for the Misenño Band was arbitrary, capricious, and otherwise contrary to law, in violation of the Administrative Procedure Act,⁷ and that it was unconstitutional. Specifically, SOFC argued that there is no evidence showing that any federal Indian agent or any of the commissioners appointed by Congress ever exercised jurisdiction over the Misenño or referred to them in their documents, that “interaction between [Misenño] *members* and the federal government does not equate to *tribal* interaction with the federal government,”⁸ and that the Misenño Band was neither a recognized Indian tribe nor under federal jurisdiction in 1934. SOFC also argued that the IRA’s land acquisition authority constitutes an unconstitutional delegation of legislative power to the Secretary of the Interior (because Congress failed to articulate sufficient standards to guide the Secretary’s decisions, limiting the Secretary’s authority only by requiring that the acquisition be “for the purpose of providing land for Indians”) and violates the Tenth Amendment (by encroaching on state sovereignty).

After the Misenño Band intervened and the parties filed cross-motions for summary judgment, the U.S. District Court for the Central District of California ruled for the Interior Department and Secretary in 2014. The U.S. Court of Appeals for the Ninth Circuit upheld the district court’s ruling in 2015. In 2016, the United States Supreme Court granted certiorari to decide two questions presented in SOFC’s petition:

1. Whether the Secretary of the Interior erred in concluding the land acquisition was authorized based on a determination that the Misenño Band qualified under the first prong of the definition of “Indian” in Section 19 of the IRA, 25 U.S.C. § 479 (now § 5128), which (as interpreted, together with 25 U.S.C. § 465, by the Court in *Carrieri v.*

⁴ An Act for the Relief of the Mission Indians in the State of California, ch. 65, 26 Stat. 712, §§ 1 and 2 (Jan. 12, 1891).

⁵ 45 Stat. 602 (May 18, 1928).

⁶ 60 Stat. 1049 (Aug. 13, 1946).

⁷ 5 U.S.C. § 701 et seq.

⁸ *Muwekma Ohlone Tribe v. Salazar*, 708 F.3d 209, 216 (D.C. Cir. 2013) (emphasis in original).

Salazar) authorizes land acquisitions only for “any recognized Indian tribe [in 1934] under Federal jurisdiction.”

2. Whether Section 5 of the IRA, 25 U.S.C. § 465 (now § 5108), constitutes an unconstitutional exercise of Congressional authority in violation of the non-delegation doctrine and Tenth Amendment.