

Congress of the United States

House of Representatives

Washington, DC 20515

ZOE LOFGREN

18TH DISTRICT, CALIFORNIA

August 7, 2024

Rules and Open Government Committee
San José City Council
200 E. Santa Clara St.
San José, CA 95113

Dear Councilmembers,

I write to express concern about the proposed Resolution regarding federal recognition for the Muwekma Ohlone Tribe.

Since the Resolution mentions me by name, I must provide important context as well express disappointment that I would even be referred to without prior communication, particularly given that a primary stakeholder involved waged a recent disinformation campaign against me. The current Resolution draft notes that I supported the Tribe's application under the Bureau of Indian Affairs' (BIA) administrative process 25 years ago. That is true. Like every other petitioner, the Tribe had the right to a fair and timely decision by BIA. However, based on the facts presented by the Tribe in their petition, BIA determined in 2002 that the Muwekma Ohlone Tribe did not meet three of the seven criteria required for federal recognition.¹ The Tribe sought a reversal of the BIA's determination through the D.C. Circuit Court and, after evaluating the BIA process and the Tribe's evidence, the Court upheld BIA's final decision in 2011.² Thereafter, the Tribe filed an appeal and was denied in 2013.³ While I supported the Tribe's application to BIA more than two decades ago, I also believe it is important to respect fact-based decisions so that all tribes have a fair and equal opportunity to seek recognition. I'm concerned that the reference to me in the Resolution implies I support overturning BIA's decision, which is what the Tribe seeks today.

I encourage the Council to approach the issue with the seriousness and attention it deserves. Unfortunately, the current Resolution draft is, at best, misleading. For example, the current Resolution extensively describes the *process* under which the Tribe submitted a petition to BIA, but fails to note the *conclusion* of that process: That BIA determined that the Tribe did not meet nearly half of the required criteria and that both a federal district court and an appeals court

¹ United States Department of the Interior, Office of Federal Acknowledgement, Summary Under the Criteria and Evidence for Final Determination against Federal Acknowledgment of the Muwekma Ohlone Tribe, Petition 111 (September 6, 2002). https://www.bia.gov/sites/default/files/dup/assets/as-ia/ofa/petition/111_muwekm_CA/111_fd.pdf

² *Muwekma Ohlone Tribe v. Salazar*, 813 F. Supp. 2d 170 (D.D.C. 2011). <https://casetext.com/case/muwekma-ohlone-tribe-v-salazar>

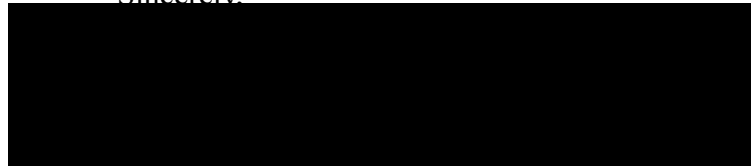
³ *Muwekma Ohlone Tribe v. Salazar*, 708 F.3d 209 (D.C. Cir. 2013). <https://casetext.com/case/muwekma-ohlone-tribe-v-salazar-2>

upheld that determination. It would be unprecedented for Congress to overturn a BIA determination in the manner the Tribe seeks: Congress has never granted federal recognition to a tribe that was denied by BIA and exhausted all appeals.⁴ Doing so for one tribe would create significant issues of fairness for other tribes who have also received negative determinations under the BIA process. I encourage the Council to more carefully consider this and other complicated issues that would arise from Congress overturning BIA's independent, fact-based determination.

Finally, I would note that federal recognition, which is part of formalizing a government-to-government relationship between the United States and a tribe, is a unique and complex federal process. The Council may wish to consider whether its intervention in this federal matter is appropriate at all.

Thank you for your consideration of my concerns. Should you have any questions, please feel free to reach out to me or to my staff.

Sincerely,



Zoe Lofgren
Member of Congress

⁴ BIA Acknowledgement Petitions Denied Through 25 C.F.R Part 83 (34 Petitions, as of March 2024).
<https://www.bia.gov/as-ia/ofa/petitions-resolved/denied>