

DESCENDANTS OF FREEDMEN OF THE FIVE CIVILIZED TRIBES ASSOCIATION

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**Testimony of Marilyn Vann,
President of Descendants of Freedmen of the Five Civilized Tribes Association
Presented to the United States Senate Committee on Indian Affairs
Oversight Hearing on Select Provisions of the 1866 Reconstruction Treaties Indian Affairs between the United
States and Oklahoma Indian Tribes
“July 27, 2022**

Greetings, Chairman Schatz, Ranking Member Murkowski, and Distinguished Members of the US Senate Committee on Indian Affairs. My name is Marilyn Vann and I serve as the President of the Descendants of Freedmen of the Five Civilized Tribes Association, which is an Oklahoma based nonprofit. The organization educates the public on the 1866 treaties, which created citizenship rights for the black freedmen and freedmen descendants of the Five “Civilized” Tribes (Cherokee Nation, Muscogee Creek Nation, Seminole Nation of Oklahoma, Choctaw Nation of Oklahoma, and Chickasaw Nation). The Association also works for an end to Federal and tribal discrimination against freedmen descendants in tribal enrollment, and in receiving Federal and tribal funded services available to members/citizens of federal recognized tribes. Our organization has members and official supporters throughout the United States and incorporated in 2002. I have been President of the organization since incorporation. On behalf of the Association, I want to thank the Committee for holding today’s hearing and for issuing an invitation to me to testify before you today on this important issue.

I am a member of the Cherokee Nation and was a litigant in the DC Federal court litigation, *Cherokee Nation v. Nash and Vann v Zinke* and all the historical research for the legal briefs. These cases reaffirmed the 1866 treaty rights to tribal membership of Cherokee freedmen descendants. In 2021, I was also a litigant in Cherokee Nation tribal court case (*Mayes v. Cherokee Nation Election Commission and Vann*), which dealt with the rights of freedmen tribal members to hold office. Although I am not an attorney (I am a retired engineering team leader), I have spoken on the history and the rights of the freedmen descendants for almost 20 years including at the Congressional Black Caucus Foundation meetings in 2007 and 2008. I also was a witness for the House Financial Services Subcommittee Housing, Insurance and Community Development Committee on Financial Services July 27, 2021. My ancestors on the federal Dawes Indian tribal rolls were registered as Cherokee, Chickasaw, and Choctaw freedmen although I do have documented Cherokee and Chickasaw Indian ancestors who died prior to the Dawes enrollment. By education I have a BS degree in engineering and retired from the Federal government as a Treasury Department Engineering Team leader with 32 years of Federal service.

Background and General History

Prior to 1492 a system of slavery had existed in some form within these tribes in our original pre-removal homelands (now the Southeastern United States), however slavery was not based on a person’s race but the conquering of other Indian tribes. Enslaved Indians were often adopted into tribal nations overtime. The earliest known contact of African enslaved people was with the Desoto Exhibition in 1541, when Desoto traveled through the southern tribes. (Two enslaved Africans on Desoto’s exhibition escaped and were later adopted by one of the Creek tribal towns.)

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After 1492, persons of African ancestry were occasionally adopted as members of the tribes or became members through Indian mothers, however this practice became almost nonexistent as the Indian system of slavery began to be associated with persons of African ancestry and chattel slavery as more and more mixed white tribal citizens brought enslaved Africans into the tribal nations. Some of these tribes wrote their first slave codes before the Indian Removal Treaties.

Enslaved Africans were also taken on the Trails of Tears by their tribes to do the hard dirty work of clearing fields, carrying bags, chopping wood, etc. so that the rest of the tribe could more easily survive and build new Indian plantations in the Removal Treaties lands of Indian Territory. After the Indian removals of the 1830s and 40s, Indian slaveholders were paid for enslaved Africans who died on the Trail of Tears. Tribal Laws were passed which limited the rights of persons of African descent to read and write, to own personal property, to marry Indians, to vote, etc. except in the Seminole Nation. Prior to the outbreak of the Civil War, African chattel slavery had become a main part of economic wealth for some tribal citizens. Because Indian slavers didn't own personal land, their wealth was based on the number of enslaved Africans they owned.

The 5 tribes in 1861 signed treaties with the Confederate states with the continuation of African chattel slavery being a primary reason for the alliance with the Confederate states. Although not all tribal members owned slaves, the leadership of the 5 tribes were slaveholders, and many of the tribal members wealth was due to the slave-based economy. Some of the tribal slavers owned hundreds of slaves, lived in mansions, and had large plantations. The free Africans of the five tribes were persons of African ancestry legally living within the 5 tribes at the beginning of the Civil War – though the majority of Africans were enslaved under tribal law. Although the official governments of the five tribes and most of the Indian troops fought for the confederacy, there were three Union regiments. The United States required new treaties with all of the five tribes after the Civil War. The 1866 treaties of the Cherokee, Creek and Seminole nations adopted after the Civil War between the tribes and the United States Government ended slavery in those tribes, and set up provisions for tribal citizenship of the former enslaved Africans with provisions giving freedmen all the rights of native Indians of their tribal nation.

The 1866 Treaties between the Choctaw and Chickasaw nations and the U.S. Government gave each of these tribes the option to adopt the freedmen, in which case the tribe would receive a payment from the U.S. Government. The Choctaw nation adopted the freedmen in 1883, and received the funds they were entitled to as stated in the 1866 treaty.

Summary of the Choctaw and Chickasaw conditions of their enslaved Africans and descendants found in Article III and IV of their 1866 joint Reconstruction Treaty.

- the Choctaw Nation was paid its full share of the funds and interest;
- the Chickasaw Nation was paid only a part of its share and interest because it failed to carry out the key requirement of the treaty;
- the Choctaw Freedmen were adopted by the Choctaw and hence were not eligible for any of the \$300,000; and
- the Chickasaw Freedmen were not adopted by the Chickasaw but did not move from Chickasaw lands and hence were not eligible for any of the \$300,000.

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Details

Article 3 of the 1866 treaty required that the \$300,000 be held in trust for the Choctaw and Chickasaw (at 5% annual interest) and only be paid to them if, within two years of the ratification of the treaty, the tribes had passed “laws, rules, and regulations” making each tribe’s Freedmen citizens of the respective tribes (i.e., “adopting” them). If no such laws were passed by the tribes in two years, then the \$300,000 would be removed from trust for the tribes and would be held “for the use and benefit” of those Freedmen who chose to remove from the tribes’ territory. The United States would, within 90 days after the two-year period, remove all Freedmen who were willing to leave. Any Freedmen who chose to remain, or removed and then returned, were to have no benefit from the \$300,000.

Article 46 of the 1866 treaty provided for an advance payment of \$200,000 to the tribes from the \$300,000 — \$150,000 to the Choctaws and \$50,000 to the Chickasaws.

During 1866-1868, the U.S. appropriated funds for the advance payments and for the interest to the Choctaw and Chickasaw.

Neither tribe adopted its Freedmen within the two-year period after ratification of the treaty. Nor did the United States remove any of the Freedmen, nor apparently did any Freedmen remove. The funds were removed from trust for the tribes (so interest payments were no longer due the tribes).

In 1873 the Chickasaw legislature passed an act adopting the Chickasaw Freedmen, subject to the approval of the “proper authorities” of the United States. Congress did not act, nor did the Interior Department.

In the late 1870s and through the 1880s, the Chickasaw legislature passed further acts and memorials asking for removal of the Chickasaw Freedmen and otherwise expressing desires for their removal.

In 1883 the Choctaw legislature passed an act adopting the Choctaw Freedmen. This was in response to a U.S. Indian appropriations act of 1882 involving a deduction from the two tribes’ appropriations, and allowing either tribe to adopt its Freedmen, under the 1866 treaty, without the agreement of the other. By the 1883 Choctaw act, the Choctaw Freedmen — who had not removed from Choctaw territory — were now Choctaw citizens, and hence were not eligible for benefits from the \$300,000 in Article 3. Unlike the Choctaw, the Chickasaw did not adopt the Chickasaw Freedmen — who had also not removed from Chickasaw territory (some were also in Choctaw territory).

In 1885 an Indian appropriation act appropriated funds to pay the Choctaws the balance owed them under Article 3 of the 1866 treaty. (A 1940 Court of Claims decision determined that the 1885 payment settled the Choctaw payments in full.)

In 1894 the U.S. Congress approved the 1873 Chickasaw adoption act.

In 1897-1898, the United States negotiated the “Atoka Agreement” with the Choctaw and Chickasaw for the final allotment of all their lands among Choctaw and Chickasaw citizens (including Choctaw Freedmen); the Atoka Agreement was enacted in the Curtis Act of 1898, but with an amendment providing that the final allotment of Chickasaw and Choctaw lands include allotments to the Chickasaw Freedmen, and also with an additional amendment authorizing a court case to determine if Chickasaw Freedmen were Chickasaw citizens (under the 1873 Chickasaw act), and hence eligible for allotment, or, if they were not citizens, to determine United States compensation to the Chickasaw and Choctaw for their lands allotted to the Chickasaw Freedmen.

In 1903 the U.S. Court of Claims found that the Chickasaw Freedmen had not been adopted, because the 1873 act had been “withdrawn” before 1894, and hence that the Chickasaw Freedmen were not Chickasaw citizens and were not eligible for allotments. This meant that the United States owed the Chickasaw and Choctaw for their lands allotted to

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the Chickasaw Freedmen. The court also found that the Chickasaw Freedmen had not removed from Chickasaw or Choctaw territory, which meant, the court found, that the Chickasaw Freedmen were not entitled to any part of the \$300,000 under the 1866 treaty. (A copy of this decision is attached.) The Supreme Court confirmed the Court of Claims decision in 1904.

The Freedmen of the 5 tribes (slaves and their descendants of Indians) relationship was the same as the U.S.'s relationship to the Tribes. That is, the Freedmen were, in essence, wards of the U.S. government in relation to the U.S. Congress' plenary power to relate to the Tribes. [In effect, Freedmen were colonial subjects that were **not legally sophisticated enough to advocate for their own best interest, so the US had a higher standard of duty to act for them.] More professionally stated, as "guardians" of the Freedmen's best interests, the U.S. breached its duty by not taking vigorous measures to see that the best interests of the Freedmen were served in requiring the Tribes to keep the Freedmen as citizens rather than the course that was taken. Unfortunately.**

By the late 19th century, the five tribes reservations were overrun by white intruders who pushed the Federal government to make Indian Territory and Oklahoma Territory (both created by the treaties of 1866) into a state. Tribal freedmen were not entitled to US citizenship under the 14th amendment to the United States Constitution as they were not slaves of U.S. citizens. The members/citizens of the 5 tribes, including freedmen, were not U.S. citizens and did not receive U.S. citizenship until the 1901 Five Tribes Citizenship Act was passed.

The Dawes final rolls were made by the U.S. government between 1898 and 1906 to distribute lands of the 5 tribes owned in common to the citizens/tribal members based on agreements between each tribe and the Federal government. See Curtis Act— Act of June 28 1898 (30 Stat 485) which required division of tribal lands to tribal members/citizens. Each tribe signed an allotment agreement which detailed the size of the allotments and other criteria such as cut off days to apply for allotments for their citizens. For example, under the Creek Agreement of March 1 1901 (31 Stat at L 861) , Creek tribal members who died prior to April 1 1899 were not authorized to be registered on the Dawes Final rolls. (See also Supreme Court Case US V Wildcat (244 US 111) Under The Cherokee Agreement (32 Stat 716) Cherokee tribal members were not listed if they died prior to September 1 1902. Freedmen of the Cherokee, Creek, and Seminole tribes received the same size land allotments as by blood members of the tribe. Most members of the tribes were listed on the "by blood" sections of the rolls with a degree of blood assigned by the Dawes commission. Freedmen and their descendants of the Five tribes were placed on separate sections of the Dawes rolls without degrees of blood by the U.S. Government largely to have a class of citizens whose allotment land would have restrictions lifted earlier (Act of April 21 1904 33 Stat at L189) than tribal members who had been registered on the Dawes rolls with a degree of Indian blood. A review of tribal membership lists (such as the Cherokee Nation 1880 tribal census) and U.S. government payment rolls (such as the 1852 Cherokee Drennen payment roll), and the 1871 immigration roll of Shawnees who were granted citizenship in the Cherokee Nation by agreement between the U.S, Cherokee and Shawnee tribes show that the 5 tribes and the U.S. government did not have degrees of blood/blood quantum for tribal members before the late 1890s. All of the tribes had some adopted citizens listed on the Dawes rolls. The Act of April 26,1906 34 Stat 137 made it almost impossible for persons registered as freedmen to transfer to the by blood sections of the Dawes rolls. This Act of 1906 also authorized the US

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president to appoint the Principal Chief (or governor) for each tribe. In the 1926 Oklahoma Supreme Court case *Sango V Willig*, the court makes it clear that a Dawes enrolled Creek freedwoman whose mothers was listed as a ¼ Creek by blood on the Dawes roll is a “non Indian” for allotment purposes (i.e. the date to sell her allotment) but not necessarily for other purposes. As stated in the book, “The Dawes Commission” by national archives administrator Kent Carter, persons of mixed African Indian blood were generally classed as freedmen by the Dawes Commission.

Oklahoma became a state in 1907 with the state constitution defining all persons except “Negros” as legally white. “Negros” (persons with any amount of African ancestry) were required to be segregated in schools, restaurants, etc. from persons of all other races in Oklahoma, not allowed to marry with persons of other races, and grandfather clause laws were passed which stripped black Oklahomans of the right to vote in state and Congressional elections until these laws were overthrown by the US supreme Court. (Guinn V United States). These laws did not affect persons with no African ancestry. For example, in 1907 Cherokee Robert L Owen was elected as a US Senator and Chickasaw Charles Carter was elected as a US Congressman. The Principal Chiefs Act (Act of October 22, 1970 – Public Law 91-496) was passed to allow members of the five tribes to vote on the principal Chief. Directions given by the Assistant Secretary of Interior in a letter to Muskogee BIA director Virgil Harrington dated March 29, 1971, which reaffirmed the right of the Cherokee, Creek Seminole, Choctaw freedmen and their descendants to vote in the Principal Chief elections.

By the middle of the twenties century, the Department of the Interior (DOI) began to issue certificate of Indian blood cards (CDIB) based on the degrees of blood assigned by the Dawes commission. Descendants of freedmen are unable to acquire CDIB cards for this reason. During the first half of the 20th century, the U.S. government began to use the degrees of blood to limit access to tribal services or Indian preference by barring persons with lower blood quantum’s from accessing Federal services or Federal jobs at the DOI for Indians. This also divesting the freedmen communities of needed resources. The BIA still to this day have NO Freedmen descendants working within its department. The DOI regulations eventually were changed in the year 2000 (25 CFR part 20) to authorize service eligibility based on tribal membership rather than minimum one quarter blood quantum for Federal funded services, however freedmen were still denied services funded by the federal government in all five tribes until Cherokee freedmen achieved victories in the courts in the twenty first century.

1866 Treaties Freedmen Provisions and Historic Background:

Seminole Treaty and Seminole freedmen

ARTICLE 2. The Seminole Nation covenant that henceforth in said nation slavery shall not exist, nor involuntary servitude, except for and in punishment of crime, whereof the offending party shall first have been duly convicted in accordance with law, applicable to all the members of said nation. And inasmuch as there are among the Seminoles many persons of African descent and blood, who have no interest or property in the soil, and no recognized civil rights it is stipulated that hereafter these persons and their descendants, and such other of the same race as shall be permitted by said nation to settle there, shall have and enjoy all the rights of native

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citizens, and the laws of said nation shall be equally binding upon all persons of whatever race or color, who may be adopted as citizens or members of said tribe.

Many of the black Seminoles had entered the Seminole reservation during the early nineteenth century as runaway slaves. They fought side by side with the Seminole Indians to prevent the tribe from being removed from what is now Florida to what is now Oklahoma. Prominent black Seminoles including Abraham, Ben Bruno, and John Horse served as Interpreters and advisors to elected tribal leaders. During the Civil War, many Seminole leaders such as John Chupco, Billy Bowlegs and Fos Harjo refused to support the Confederacy and removed to Kansas along with black Seminoles such as Robert Johnson -Enlisting with the Union Indian regiments. , After the Civil War ended both Loyal Seminoles and Confederate Seminoles were represented in treaty negotiations, with Band Chief John Chupco being a representative for Loyal Seminoles and John Brown who had been a confederate officer representing confederate Seminoles.

Black Seminoles leaders after the Civil war included rancher and store owners Ceasar Bruner and Dosar Barkus all of whom were band Chiefs Many freedmen spoke the Muscogee language, attended schools with Indians, worshipped at ceremonial grounds and were thoroughly a part of the community

The Seminole Nation did not have intermarried white citizens, but there were some adopted Indians on the by blood section of the Dawes rolls including Caddo Indians who did not receive degrees of blood.

After Oklahoma statehood, the Seminole Bands continued to meet and elect band representatives, and the Band members including freedmen voted and recommended Principal Chiefs for the US government to appoint. Prior to the 1970s , the Seminole nation leadership unsuccessfully requested to be repaid by the US government for the value freedmen allotments. The litigation was unsuccessful

Creek Nation Treaty and Creek Freedmen.

Creek Nation Treaty (Ratified July 19th, 1866, Proclaimed August 11, 1866)

ARTICLE 2. The Creeks hereby covenant and agree that henceforth neither slavery nor involuntary servitude, otherwise than in the punishment of crimes, whereof the parties shall have been duly convicted in accordance with laws applicable to all members of said tribe, shall ever exist in said nation; and inasmuch as there are among the Creeks many persons of African descent, who have no interest in the soil, it is stipulated that hereafter these persons lawfully residing in said Creek country under their laws and usages, or who have been thus residing in said country, and may return within one year from the ratification of this treaty, and their descendants and such others of the same race as may be permitted by the laws of the said nation to settle within the limits of the jurisdiction of the Creek Nation as citizens [thereof,] shall have and enjoy all the rights and privileges of native citizens, including an equal interest in the soil and national funds, and the laws of the said nation shall be equally binding upon and give equal protection to all such persons, and all others, of whatsoever race or color, who may be adopted as citizens or members of said tribe.

Note – Freedmen Harry Island and Cow Tom (Cow Micco) were interpreters for the nation and signed the treaty.

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Prior to the 1830s removal from the Alabama homeland, the Creek Nation consisted of separate tribal nations including Eufaula, Coweta, Arbeka, etc. The separate tribes united and were organized as tribal towns which were effectively voting districts. At the time of the Civil War, there were several free Blacks who had either bought their freedom or been freed by their master who was often a relative. In 1861, Creeks leaders such as the McIntoshes, Perrymens and Graysons supporting the confederacy passed laws to stop slaves from owning personal property and required free Blacks to “chase a master” by March 10, 1861 or they would be sold to the highest bidder. This required free Blacks to sell their property before being returned to slavery. Many of the free Black Creeks and Seminoles, traditional Indians and enslaved Africans opposing the Confederacy, joined with Creek traditional Chief Opothle-Yahola (who also owned enslaved Africans) to leave the Creek nation territory for safety, but were attacked multiple times when they cross into the Cherokee Nation territory (just north of Tulsa, Oklahoma) in more than 3 major Indian Territory Civil War battles on the way to Kansas, and although the Yohola’s men fought bravely, they were forced to leave most of their food and supplies to avoid capture. Hundreds were slaughtered including old women and children by the Cherokee Confederates. (Cherokees captured the Indians and placed them into war camps and murdered the Africans). The US Government in Kansas encouraged many of the male refugees into military service and many joined the First Indian Home Guard and fought bravely. During the Civil War, men such as Cow Tom served as interpreters to the Union Army, and Creek Africans such as Picket Rentie and Sugar George, and Robert Johnson served in the Indian Home Guards to protect the nation from Confederates. Other blacks were mustered into the First Kansas Colored regiment.

After the end of the Civil War, both Loyal Creeks and Confederate Creeks had a voice in the treaty. Loyal Creeks such as Sands advocated for blacks to have an equal right in the tribe while confederate Creeks such as DN McIntosh supported the freedmen having separate lands within the nation. The Loyal Creeks prevailed. The treaty promised that Loyal Creeks would be paid for their losses, however the freedmen Loyal Creeks never shared in the Loyal Creek Funds which were paid in the 20th century. After the enactment of the 1866 treaty, In 1867 the Creek nation passed a constitution which incorporated the 1866 treaty provisions. Three new tribal towns to incorporate the freedmen into the Creek nation as citizens were set up, These were Northfork, Canadian Colored, and Arkansas Colored for the freed slaves so that they could select a warrior and Town King to represent them in the House of Kings and House of Warriors (ie the legislature). The 1867 constitution included the freedmen as full citizens of the nation. Schools were set up for freedmen children although some schools were mixed, and freedmen farmed and ranched on the reservation. Leading freedmen included Ketch Barnett, town king Cow Tom, Harry Island, Judge Jesse Franklin, businessman Sugar George – who also served as a town King, interpreter Robert Johnson, Attorney, banker and teacher AGW Sango, Attorney James Coodey Johnson who was an interpreter for Federal Judge Parker and an advisor to the Seminole Nation Chief. After Oklahoma statehood the tribal governments were greatly diminished and most of the tribal towns ceased electing officers as the Act of 1906 limited the operations of tribal government. Under the Creek Agreement, each Creek citizen including freedmen received acre allotments. Creek freedmen community leaders such as Jake Simmons Jr Fought against segregation of blacks both freedmen and non freedmen after Oklahoma statehood.

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The Creek nation leadership (Creek Indian Council) attempted to remove the freedmen from the tribe in 1944, however this proposed constitution was not approved by the DOI due to Creek citizens not voting on the constitution.

Cherokee Nation:

The Cherokee Nation, like the other 5 tribes that removed from the southeast United States to eastern Oklahoma, was a tribe which enacted black codes beginning in the 1820s in part due to the influence of intermarried white citizens and their children. Prior to the 1820s Cherokees retained its strength increasing its population by adopting persons into matrilineal clans. Many white men received Cherokee citizenship after marriage with Cherokee women. Several Creeks received Cherokee citizenship during the 1820s based on an agreement between the Creek and Cherokee nation. Cataba, and Natchez Indians were also adopted citizens. There was no concept of "Cherokee blood". Both the 1827 and 1839 constitutions had discriminatory language against persons of African ancestry although a small number of persons with African ancestry were recognized citizens. The tribe allied with the Confederate states in 1861, in part to protect permanent chattel slavery. Cherokee freedmen such as Wheat Baldrige served in the Indian Home Guard. After the Civil War, the Cherokee freedmen and their descendants received all the rights of native Cherokees under Article 9 of the treaty of 1866. (14 Stat 799).

ARTICLE 9. The Cherokee Nation having, voluntarily, in February, eighteen hundred and sixty-three, by an act of the national council, forever abolished slavery, hereby covenant and agree that never hereafter shall either slavery or involuntary servitude exist in their nation otherwise than in the punishment of crime, whereof the party shall have been duly convicted, in accordance with laws applicable to all the members of said tribe alike. They further agree that all freedmen who have been liberated by voluntary act of their former owners or by law, as well as all free colored persons who were in the country at the commencement of the rebellion, and are now residents therein, or who may return within six months, and their descendants, shall have all the rights of native Cherokees: Provided, That owners of slaves so emancipated in the Cherokee Nation shall never receive any compensation or pay for the slaves so emancipated. [945]

The 1866 treaty also authorized the adoption of "friendly Indians". A band of Delaware and Shawnee were adopted into the tribe in 1867 and 1869 respectively based on Agreements between those tribes, the US government, and the Cherokee nation government,

The treaty of 1866 had representatives from both Union and Confederate Cherokees. According to a court of claims lawsuit *Cherokee Nation V United States* 12 ICC 570, the major concerns of the tribal treaty representatives were that the nation not be divided into two separate nations – one for Confederate Cherokees, that the tribe be paid for lands cessions to the United States, that railroad right of ways be limited, and that the nation not be incorporated into a United States Territory. After the treaty was signed, Chief WP Ross, a Princeton educated lawyer wrote amendments to the 1839 constitution so that the tribal constitution would be

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in compliance with the treaty of 1866. The Cherokee men (women could not vote) approved the constitutional amendments.

The US Senate held several Field hearings within the tribal reservations to ascertain the status of the freedmen, and often spoke to current or former tribal leaders to seek their understanding on the treaty rights of the freedmen. For example, in US Senate Committee on Indian Affairs Hearings (Conditions of Indian Tribes in Indian Territory) held in May 1885 in Tahlequah, both former Chief WP Ross and former Judge William Boudinot affirmed that the freedmen received their citizenship rights through the 1866 treaty.

Prior to Oklahoma statehood. Freedmen such as Stick Ross, Jerry Alberty, Frank Vann, Ned Irons and Fox Glass served in the tribal council and their descendants such as Mr. L Ross and Mr. M Harrison are active in the tribal community today. After the Civil War, the Cherokee freedmen periodically went to Federal court to enforce their treaty rights to payments and annuities (See *Moses Whitmire, Trustee for the Cherokee Freedmen Vs Cherokee Nation and United States* 30 Ct Claims 138 (1895)).

Almost all of the Cherokee freedmen who received tribal allotments during the Dawes enrollment were listed on the Cherokee Nation 1880 census or were descended from someone listed on the 1880 census just as were Cherokees by blood. Several persons who had been listed on earlier rolls as "native Cherokee" rather than "adopted colored" (example Anthony Crittenden) or received payment rolls only available to native Cherokees (ie Perry Ross) were listed as Freedmen. Many white citizens challenged the fact that they did not receive allotments due to the dates of their marriages, the US Supreme Court (*Redbird V Cherokee Nation*) held that the intermarried white citizens did not have the full rights as tribal members who were citizens by treaty including the freedmen. About 200 Cherokee citizens who originally had immigrated into the Cherokee nation received 160-acre allotments (rather than 110 acre allotments) due to the provisions of the Delaware-Cherokee agreement.

Between Oklahoma statehood in 1907 until after the Principal Chiefs Act was passed, the Cherokee Nation government a critical function was to file lawsuits against the United States. Appointed Chiefs did not receive salaries and had few funds for government functions. The first tribal employee since statehood was Mrs Harder, who was hired in 1966. An Indian Claims Court determined that the Cherokee nation was not entitled to receive funds for adopting the freedmen or for the value of the freedmen allotments (*Cherokee Nation V US* 12 ICC 570 (1963)). The judges emphasized that the tribe was not forced to adopt the freedmen. In the 1960s Cherokee freedmen received their portion of a judgement fund authorized by Title 25 Section 991

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Cherokee freedmen voted on the 1975 constitution (which authorized all Dawes enrollees and descendants to be members of the tribe) and in elections until 1983 in which they were blocked at the polls – which appears to have been due to a dispute with the Principal Chief. Eventually the tribal code was passed to make it impossible for freedmen to register in the tribe. The freedmen fought in both tribal and federal courts against these discriminatory laws.

Need for Congressional Action

At the end of the Civil War, written legal promises were made to tribal freedmen and their descendants – promises which have been broken after Oklahoma Statehood.

Today's most descendants of freedmen are denied access to Federal housing programs available to members of Federal tribes in violation of the treaty provisions by tribal governments whose leadership assert tribal sovereignty as sufficient reason to violate the treaties and human rights of the freedmen. However, just as the U.S. Supreme Court determined the U.S. government did not have a unilateral right to break Article 3 of its 1866 treaty agreement with the Muscogee Creek Nation (see e.g. *McGirt v Oklahoma*¹) the freedmen position is that the tribes do not have a unilateral right to remove treaty rights from the freedmen. All amicus briefs submitted to the U.S. Supreme Court by the 5 tribes stressed the validity of Article 3 (ceding and conveying the west half of their lands in present day Oklahoma) of the Creek Treaty when it came to the Muscogee Creek Nation retaining its reservation. Article 2 of the treaty (abolishing slavery by the Creek Nation and establishing the citizenship rights of the freedmen) still remains in effect.

The Department of Interior does not have the authority to break the treaty by discriminating against the freedmen.

INCOME BASED PROGRAMS SUCH AS NAHASDA

There is no doubt that many descendants of freedmen of the tribes qualify for programs based on income. The lower incomes of many freedmen are due not only to current racism but to historic racism where the Federal government assisted in limiting assets of tribal blacks. The Choctaw and Chickasaw freedmen treaty allowed these nations to limit freedmen to 40-acre allotments in sharp contrast to other tribal members, including adopted whites, who received 320 acre allotments. In 1907, Oklahoma became a state without the U.S. Government requiring anti-discrimination laws in the state constitution. The first law passed was Senate Bill 1 which set up Jim Crow segregation laws throughout Oklahoma only for persons of African ancestry – persons without African ancestry were legally white. Establishment of sundown towns in cities such as Henryetta in the Muscogee Creek Nation where all blacks were forced out and the 1921 Greenwood north Tulsa community Race Massacre (Greenwood community is located in the Cherokee Nation reservation) compounded

¹ *McGirt v. Oklahoma*, 591 U.S. ___ (2020); 140 S. Ct. 2452 (2020).

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poverty of freedmen citizens. Freedmen citizens such as Attorney BC Franklin -- the father of Historian John Hope Franklin who was a Dawes enrolled Choctaw freedmen -- lost all of their assets in the massacre.

The non-profit Oklahoma Policy Institute in 2010 published a paper showing a significant wealth gap between Oklahoma Native Americans and Oklahoma African Americans with native Americans having a median income of 11,216 below the median come for the state and African Americans having a median income of 18,231 below the state median income. This same survey shows 63.4 % of Oklahoma native Americans owned homes while only 42.7% of Oklahoma African Americans were homeowners. Of course, freedmen descendants were negatively affected by the U.S. government's redlining policies in the past while currently being unable for the most part to participate in the Federal funded Native American programs to increase home ownership. The aiser Family Foundation reports black poverty of 28% in Oklahoma versus 19% for American Indians in 2019. Descendants of Freedmen, due to direct actions by the U.S., state, and tribal governments that have diminished their net worth, have few financial resources to enforce their rights in court or petition Congress for enforcement of 1866 treaty rights.

[Impact of the Denial of NAHASDA and Other Federal Benefits on Descendants of Freedmen Seminole Nation of Oklahoma](#)

The ancestors of the Seminole freedmen were an integral part of the nation even prior to the Civil War – serving as warriors, interpreters, and after the Civil War as elected tribal leaders of freedmen political bands. Article 2 of the Seminole Nation 1866 treaty states the freedmen should have all the rights of native citizens. Seminole Nation registers its descendants of freedmen in the tribe, but classifies them as “citizens” rather than “members” and denies them access to services. The Seminole Nation adopted a new constitution in 1969 which continued to have fourteen bands including two freedmen bands. Freedmen are allowed to vote and allowed 4 out of 28 tribal council seats based on the tribal constitution. After successfully winning a lawsuit in the court of claims due to underpayment of land sales in 1823 in Florida , Congress in 1991 approved a usage plan for tribal programs to be funded by the judgement fund award. The BIA had recommended to the tribe that the freedmen be excluded from the programs as their position was that ancestors of the freedmen were not recognized members of the tribe when the land was sold to the United States. After receiving the funds the tribe voted that the freedmen could not participate in the programs, taking the position that only tribal members with CDIB cards were descended from persons recognized as tribal members in 1823.. Freedmen tribal leaders at that time asserted that members of Congress had been assured that the freedmen would be able to participate in the programs funded by the judgement fund. In 2000, the tribe attempted to remove the freedmen completely through a constitutional amendment but was blocked by the Department of Interior (DOI), as they did not receive permission from the DOI to remove the freedmen from the tribe. In the DC Federal case *Seminole Nation v. Norton*², the court ruling made it clear that the Department of the Interior had not overreached its authority in protecting the Seminole freedmen 1866 treaty rights to tribal membership. (Some

² *Seminole Nation of Oklahoma v. Norton*, 223 F.Supp.2d. 122 (D.D.C. 2002).

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tribal funding was reduced during the court case until the tribe added the freedmen back to the voting rolls and invited the Freedmen council members to take back their seats)

Subsequently, the Department of the Interior issued a letter to the Seminole Nation that freedmen qualify for federal services based on membership in Federal tribes (See Exhibit) The Seminole Nation then reissued the freedmen tribal membership cards to have the words 'FREEDMEN' stamped in bold letters, the statement " zero ("O")blood quantum" on the front and the words "voting privileges only on the back " of the tribal card.

The Seminole Nation Housing authority uses a point system to determine priority for NAHASDA funded services with fullbloods having the highest number of priority points. In 2015, Seminole Nation Freedmen Tribal Councilwoman Leetta Osborne Sampson and I requested in writing that the office of inspector general and former HUD Secretary Julian Castro investigate the denial of NAHASDA funded services to Seminole freedmen. (Housing policies at that time required a CDIB card and applications from freedmen citizens were not accepted). In 2016, we received a letter from HUD officials that the tribe had changed the housing policy to allow freedmen to apply for housing services. (See Exhibit) The written policy was changed to allow freedmen to apply for the programs in the applications by removing the requirement for CDIB card and adding the words freedmen/citizens as eligible to apply. Despite this change however, Seminole freedmen tribal citizens did not receive Housing services because freedmen were not awarded points and were placed in the same category as members of other tribes.

In April 2018, Councilwoman Osborne and I met in Washington D.C. with Heidi Frechette, Director of Office Native American Programs (ONAP) with the Department of Housing and Urban Development's Office of Public and Indian Housing, and explained to Ms. Frechette and her colleagues that freedmen tribal members/citizens still were being denied access to NAHASDA funded services. On September 1, 2018, the Attorney for the Housing Authority of the Seminole Nation informed the tribal council in a meeting (available on YouTube) that she had been contacted by HUD and informed that the Seminole freedmen needed to be able to receive NAHASDA funded services. Tribal councilmembers at the meeting raised issues of tribal sovereignty, others stated that federal law limited the programs to CDIB holders, that the freedmen should be satisfied to be included with members other tribes, or that the federal government should do something to fix the problem of the housing for the freedmen and not the tribe. A review of the November 2021 Housing application has removed the Seminole freedmen citizens from being included with members of other tribes and again requires CDIB cards as part of the application – resulting in Seminole freedmen once again being denied the ability to apply for NAHASDA funded services ([Housing App 2021 revised.pdf](http://Housing_App_2021_revised.pdf) (hasnok.org)). I am unaware if Seminole freedmen have applied to other tribes for housing assistance, but the Seminole Nation has proactively worked to discourage other tribes and Federal agencies from providing federal services (including Indian Health Services until late) to Seminole Nation tribal citizens. For example, the Cherokee nation was told by the Seminole nation that Seminole freedmen did not qualify to be seen at Cherokee Nation medical clinics. The Seminole tribe as of 2021 has approximately 18,800 registered members and citizens, which includes freedmen. Of that number, freedmen citizens account for approximately 3,200 persons in 2021. It is my understanding based on information received from tribal council representatives that the tribe/tribal housing authority submits population including both "members and "citizens" for its Federal funding requests. Notably, by counting freedmen among its total

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population, the Seminole Nation receive a greater proportion of NAHASDA formula funds and other program funds, despite the fact that it continues to take affirmative steps to limit and often deny the freedmen access to these federally-funded benefits. I want to emphasize that no tribe is completely sovereign in use of NAHASDA funds and that Seminole Nation elected leaders are aware of this. For example, an Office of Inspector General (OIG) audit report dated September 10, 2003 for the Seminole Nation Housing Authority required the authority to repay NAHASDA funds used to purchase land in 2001, which was not appraised prior to purchase and for which an environmental review was not made prior to purchase. [Finding \(hud.gov\)](#)

[Several months ago, I listened to a recording of a Seminole Nation General Council meeting in which the Housing director discussed freedmen and NAHASDA issues with the council. Some of the council people implied that if the federal government wants the freedmen to have housing they should make the tribe give them housing services; or that HUD should give the freedmen housing.](#)

Medical Services – Seminole Nation

The Seminole Nation does not operate medical clinics or hospitals. The Seminole Nation has had a policy of informing other tribes and Federal government units that the freedmen do not qualify for federal services, subsequently many tribes units or Indian Health service medical facilities until recently refused to process a chart for Seminole freedmen citizens/tribal members. For example, the Cherokee nation was contacted by Seminole nation after opening charts for Seminole freedmen (approximately 2015) who advised them that freedmen did not qualify for medical services. Subsequently, the Seminole freedmen who had opened charts received letters from Cherokee nation that they had been contacted by Seminole nation. On that basis the letter stated Cherokee nation was suspending the charts until they received further guidance. Such actions by Seminole nation created a great hardship for many Seminole nation freedmen citizens/tribal members. In 2014, 2017, and 2018, Seminole Nation Councilwoman Leetta Osborne Sampson and myself had meetings with officials at Indian Health Services Headquarters requesting that they ensure that Seminole freedmen had access to Federal funded medical services at HIS/tribal clinics and hospitals. Indian health service officials stated that members/citizens of tribes Indians with CDIB cards, and persons who had proven they were Indians in the community qualified for Indian Health Funded services. When the COVID19 epidemic vaccine distributions began in late 2020, IH-S and tribal units received sufficient supply earlier than the states did. IH-S and tribal governments worked hard to ensure that tribal members received the vaccine, but Seminole freedmen tribal members were turned away from receiving shots although the vaccine was available. National newspapers and national TV stations ran stories about elderly freedmen such as the elderly members of the Thomas family being turned away and dying from COVID19. In October 2021, the Indian Health Services sent advisory letters to all tribal chairman/tribal chiefs, Indian Health Service Units, and urban health facilities directing them to allow Seminole freedmen to receive health care when they present their tribal membership/tribal citizenship cards. Seminole Freedmen have been receiving medical services at a variety of tribal Indian Health Service Units since October 2021.

Educational Benefits – Seminole freedmen

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Seminole Freedmen have been unable to receive education at DOI funded schools such as Haskell Institute although they are members/citizens of a federal tribe . Nor do the Seminole freedmen receive other scholarships for members of federal tribes as they tribe will not certify that they are members of the tribe qualifying for such assistance. Most schools do not allow Seminole freedmen children to participate in Johnson-Omally Programs (JOM) as the Seminole nation informs them that the children do not qualify for the programs. This is in spite of the DOI letter from 2003 which state that Seminole freedmen qualified for educational benefits.

Seminole Freedmen – Per Capita Payments, CARES Act or American Rescue Plan Act (ARPA) payments

Although the Seminole freedmen applied, they did not receive any relief payments funded by the CARES Act or the American Rescue Plan Act (ARPA). No Seminole freedmen received a payment funded by the CARES Act. All persons registered with the Seminole nation received 2000 payments as COVID 19 ARPA assistance payments except for the freedmen citizens. Freedmen who applied received letters stating that they had the “wrong card” and could not receive the funds. It is my understanding that newly registered by blood Seminoles received the 2000 payments.

Muscogee Creek Nation:

Article 2 of the 1866 Creek treaty (clearly maintains that . the freedmen and their descendants shall have all the rights of native citizens and are entitled to an equal interest in the soil and to share in the funds of the nation – each Creek citizen including freedmen citizens received 160 acre allotments during the Dawes enrollment.

<https://learn.k20center.ou.edu/lesson/736/Reconstruction%20Treaties%20of%201866%E2%80%94Reconstruction%20in%20Indian%20Territory.pdf?rev=2701>

After the Civil War, Creek freedmen served as tribal judges, elected leaders, tribal attorneys, and were leading businessmen. The descendants of these illustrious individuals such as Mrs. K Williams a descendant of Freedmen Judge Jesse Franklin wish to join their ancestors in serving their tribal nations. In 1979, the Acting Deputy Commissioner of Indian Affairs approved a constitution which limited tribal membership to “creeks by blood”. Freedmen and freedmen descendants were barred from voting on the constitution although some had attempted to register for the election. For example, in 1976, Reverend A Mitchell who then lived in Checotah had been turned away when he attempted to register to vote = tribal employees/tribal agents telling him that “the freedmen had been removed from the tribe in 1906 by the US government. Mrs Mary C of McIntosh County was also not allowed to register to vote on the new constitution. Although tribal law at first allowed applicants for citizenship to show that they were Creeks by blood by using a variety of rolls, this language was removed from tribal law in 1991 and the tribe did not allow applicants to receive citizenship from these rolls which included the 1857 Old Settler roll. For many years, the citizenship department did not even allow persons who had no ancestors on the by blood rolls to receive an application for Creek citizenship. Currently Freedmen are being denied services through lack of tribal membership.

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A 2018 Federal lawsuit (filed by Creek Freedmen descendants unaffiliated with the Descendants of Freedmen Association) to enforce 1866 treaty rights of Creek freedmen was dismissed for technical reasons. The judge requested that the freedmen litigants try to seek justice in tribal court since there had been several years since freedmen had tried to use the federal courts. Mr Kennedy and Ms Grayson filed a case in tribal court in 2020 but the judge recused herself in February 2021. A new judge has not been assigned although the tribe has tried other civil cases based on the tribal website.

Many Muscogee Creek Tribal leaders as well as most candidates for elective office have justified freedmen disenrollment and the tribes right to discriminate against the freedmen based on tribal sovereignty and or the fact that the DOI approved the 1979 constitution. Although the current Muscogee Creek Nation chief issued a public statement on May 27, 2021 that the tribe should have town halls with public comment to consider revising the tribal constitution to again register freedmen descendants (<https://www.nytimes.com/2021/05/28/us/politics/freedmen-citizenship.html>) to my knowledge, no public meetings have been set to date. A subsequent statement by Chief Hill on social media asserts that freedmen citizenship issues must be resolved by the Muscogee people. According to the Muscogee Nation website, the tribal population in 2021 was 86,100. Since the time of the Dawes enrollment, Creek freedmen were approximately 1/3 of the tribal members. By extension, the number of freedmen (if registered in the tribe were permitted) would be approximately 28,000 in 2021 My conclusion is that the freedmen will continue to be denied services regardless of treaty obligations absent federal intervention. Descendants of Creek freedmen do not receive any benefits including, housing assistance medical services, educational services, or covid assistance payments due to their status as nonmembers. \$493.3 million dollars in covid relief funds under the American Rescue Plan Act, the Creek freedmen did not receive a share of those funds.

As a result of past and current systemic racism, Descendants of Freedmen have substantial needs. While there are too many to name here today, some of the persons who need assistance at the present time include:

- Mr. L. Lovett of Okmulgee – A senior citizen on disability who has had a double lung transplant. He greatly needs rental assistance. He is a Creek freedmen descendant.
-
- Mrs. B. Wilson of Okmulgee –She recently passed away She was a widowed senior citizen who desperately needed a roof. Her daughter who took care of her still lives in the house and should qualify for assistance based on income. The room has a tarp and there is damage to the foundation. . She greatly needs housing repair assistance. She is a Creek freedmen descendant.
-
- Ms. W. Rice of Okmulgee – A single mom who works a part-time job and is a student. She needs rental assistance, but would eventually like to receive assistance with a down payment to purchase a home. She went to the Creek Nation to apply for assistance, but was denied due to not being registered due to freedmen status. Ms Rice and several other young members of her family also need educational assistance.

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- Dr M just completed her medical residency in Oklahoma. She and her family did not qualify for Federal financial assistance available for Indians/tribal members as she and her family are Creek freedmen. Receiving such assistance would have aided her in getting her degree which could aid the Creek people.
- Mrs Reagan and Mr Lewis are Creek freedmen descendants who are lower income people living in Oklahoma. They are living in unsafe housing and need housing assistance

Cherokee Nation

In recent years, the Cherokee Nation has worked to live up to its treaty obligations to descendants of Cherokee freedmen, especially since Judge Thomas Hogan's order was issued in the *Cherokee Nation V Nash* case in August 2017. In 2021, the Federal order was finalized in the Cherokee Nation tribal supreme court in :*RE: Effects of Cherokee Nation v. Nash and Vann*.

As a result of this federal litigation, I am pleased to report that Cherokee freedmen descendants are being registered in the tribe and are accessing housing assistance, COVID 19 assistance, medical service programs under the Hoskin administration and previously under the Baker administration. Freedmen as well as Delaware and Shawnee tribal members can once again run for office as was the case prior to the diminishment of tribal government in 1907 due to Oklahoma statehood. I myself was appointed as a commissioner on the Cherokee Nation Environmental Protection Commission in September 2021 by Honorable Principal Chief Chuck Hoskin with approval by the tribal council, being the first tribal member of freedmen status to serve on a Cherokee Nation Board.

However, I must emphasize to this Committee that this state of affairs did not come about without federal intervention as well as great sacrifices by freedmen and their supporters and attorneys , . I myself spent more than \$100,000 in personal funds to ensure that the attorneys were able to continue the Cherokee freedmen cases – this is outside of personal funds used for advocacy. My good friend, Mr. Eli Grayson, an activist who is Creek citizen with freedmen ancestry also spent more than \$100,000 in personal funds to advocate and publicize freedmen rights. Former House Financial Service Committee Chairman Barney Frank and his staff worked tirelessly to get freedmen protective language included in the 2008 NAHASDA Re-Authorization legislation which tied the tribes ability to receive federal housing funds while litigation between the Freedmen and Federal defendants continued. Federal funds were frozen for a few weeks during a 2011 close tribal election for principal chief after a tribal court ruled to again disenroll freedmen tribal members The funds were restored very quickly after the tribe, the freedmen litigants, and the Department of Justice agreed that freedmen would remain in the tribe during the litigation and any settlement periods and the tribe would not discriminate against freedmen during this period. A moratorium on registering new freedmen tribal members continued until 2017

The attorneys on the cases, especially the Velie law firm, expended hundreds of thousands of dollars of legal time – much of which has not been reimbursed – to see the cases through to the end. In 2003, Cherokee freedmen descendants commenced litigation in Federal court on citizenship issues in the *Vann v. Norton* case The *Cherokee Nation v. Nash and Vann* case was filed in 2009 by the Cherokee nation against freedmen and the

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department of Interior. in 2004 (*Lucy Allen*) case was filed in tribal court and won in 2006 Under the administration of Principal Chief Chad Smith, the Cherokee Nation spent tens of millions of dollars to dismiss the Federal case(s) on technical grounds, and hired Washington, DC lobbyists in attempt to tell a different history of the freedmen than what is in the historical record.

There continue to be office holders and candidates for office who run on anti-freedmen platforms – implying that freedmen citizenship or freedmen rights to hold office is unconstitutional or an abrogation of tribal sovereignty. Some office holders were even involved in illegally obtaining signatures for the freedmen removal petition to vote the freedmen out in 2006 by changing the tribal constitution. Because of the concerns of Congress, the tribe suspended the disenrollments and set up a tribal court case to review freedmen tribal membership.

Indeed, there are current council members who argued in tribal court in 2018 that the Cherokee Nation should appeal Judge Hogan's ruling to the U.S. Court of Appeals for the D.C. Circuit. . A 2019 Chief Candidate who was serving on the tribal council even denied freedmen children school supplies they were entitled to under the Johnson O'Malley Indian Education program when he worked outside the tribal government as a school administrator in Muskogee. The language in the Housing draft bill will provide extra incentive and insurance against those seeking to deny freedmen their rights. Black U.S. citizens in the deep south did not only depend on the courts to uphold their rights but also sought support of Congress to uphold legal and human rights. The Cherokee Nation has a population of approximately 400,000 tribal members/citizens in 2022, including about 8,500 Cherokee freedmen tribal members. Based on the Dawes enrollment, freedmen registered in the tribe would have been approximately 48,000 – the lower number of currently registered freedmen is a direct result of the moratorium on freedmen registration instituted by earlier tribal leadership.

Also, there are Federal Agencies, departments and BIA operated schools which have been resistant to honoring the treaties. Officials at a DOI operated University in 2020 refused to process Cherokee freedmen tribal members applications until Principal Chief Hoskin got involved, although the Chief of Staff had tried to resolve the issue earlier.

Choctaw Nation of Oklahoma:

The Choctaw Nation of Oklahoma had harsh slave codes. They heavily supported the Confederate States, few if any Choctaw Indians fought for the Union. The tribe had almost no free blacks prior to the Civil War due to tribal law, (One of the few was the Beams family which had been freed by their father who recorded this manumission in multiple courthouses, but their nonblack relatives tried to reenslave them after the death of the father. There Choctaw relatives "sold them" but ultimately part of the family received justice through the courts after running and hiding for years) and eventually getting citizenship in the Creek nation. Some of the descendants of Mitchell Beams (Baccus family) are currently registered in the Creek Nation

The treaty was jointly with the Chickasaw Nation.

ARTICLE 2. The Choctaws and Chickasaws hereby covenant and agree that henceforth neither slavery nor involuntary servitude, otherwise than in punishment of crime whereof the parties shall have been duly

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convicted, in accordance with laws applicable to all members of the particular nation, shall ever exist in said nations.

ARTICLE 3. The Choctaws and Chickasaws, in consideration of the sum of three hundred thousand dollars, hereby cede to the United States the territory west of the 98° west longitude, known as the leased district, provided that the said sum shall be invested and held by the United States, at an interest not less than five per cent., in trust for the said nations, until the legislatures of the Choctaw and Chickasaw Nations respectively shall have made such laws, rules, and regulations as may be necessary to give all persons of African descent, resident in the said nation at the date of the treaty of Fort Smith, and their descendants, heretofore held in slavery among said nations, all the rights, privileges, and immunities, including the right of suffrage, of citizens of said nations, except in the annuities, moneys, and public domain claimed by, or belonging to, said nations respectively; and also to give to such persons who were residents as aforesaid, and their descendants, forty acres each of the land of said nations on the same terms as the Choctaws and Chickasaws, to be selected on the survey of said land, after the Choctaws and Chickasaws and Kansas Indians have made their selections as herein provided; and immediately on the enactment of such laws, rules, and regulations, the said sum of three hundred thousand dollars shall be paid to the said Choctaw and Chickasaw Nations in the proportion of three-fourths to the former and one-fourth to the latter, less such sum, at the rate of one hundred dollars per capita, as shall be sufficient to pay such persons of African descent before referred to as within ninety days after the passage of such laws, rules, and regulations shall elect to remove and actually remove from the said nations respectively. And should the said laws, rules, and regulations not be made by the legislatures of the said nations respectively, within two years from the ratification of this treaty, then the said sum of three hundred thousand dollars shall cease to be held in trust for the said Choctaw and Chickasaw Nations, and be held for the use and benefit of such of said persons of African descent as the United States shall remove from the said Territory in such manner as the United States shall deem proper,—the United States agreeing, within ninety days from the expiration of the said two years, to remove from said nations all such persons of African descent as may be willing to remove; those remaining or returning after having been removed from said nations to have no benefit of said sum of three hundred thousand dollars, or any part thereof, but shall be upon the same footing as other citizens of the United States in the said nations.

The tribe did not adopt the freedmen until 1885 and received money from the U.S. government for doing so pursuant to the terms of their 1866 treaty. The freedmen did receive some education through the tribe after 1885 but were seen as lesser citizens. The tribe continued laws against intermarriage with blacks and although blacks voted in tribal elections before statehood, they were not allowed to hold office freedmen Henry Cuthlow was elected but not allowed to take his seat in the tribal legislature. Again, freedmen only received forty-acre allotments when the Dawes commission divided the tribal reservation land.

Between 1500 and 2000 Chickasaw and Choctaw freedmen challenged their status on the freedmen section of the Dawes rolls. The litigants were persons of Indian and African blood, some of whom were considered to be family by their Choctaw/Chickasaw relatives, or who had exercised the rights of citizenship in the Chickasaw or Choctaw nations. Betty Ligon, a Choctaw freedmen and the daughter of prominent Choctaw Indian Robert Love was the lead plaintiff in Equity 7071 case which was dismissed for technical reasons

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A constitution passed in 1983 removed freedmen from citizenship. Freedmen descendants were not allowed to vote on the constitution which disenrolled them. The freedmen thusly have been denied the ability to access NAHASDA funds, receive services from tribal clinics, or receive assistance from other program funds such as the CARES Act due to their disenrollment.

The Choctaw nation had about 200,000 population in 2021. Based on the freedmen being 1/3 of tribal citizens during the Dawes enrollment, approximately 66,000 freedmen descendants should be currently registered in the tribe. A letter from Choctaw Principal Chief Batton dated June 25, 2020 to Honorable Speaker Pelosi criticizing proposed language in housing bills, which ties the ability of his nation to receive federal housing funds to the tribe honoring 1866 treaty obligations asserted the language would destroy tribal self-determination. Chief Batton stated that the Freedmen issue is a problem caused by the United States, not the Choctaw Nation – completely ignoring the slavery and black codes passed by tribal law prior to 1866, the tribes alliance with the Confederate States, the many years the freedmen were uneducated, stateless people without citizenship in any nation, discriminatory laws in existence after the adoption blocking Choctaw freedmen ability to hold office and intermarry with other tribal members – and the Choctaw tribe insistence on limiting the freedmen tribal members to 40 acre allotments all added to the impoverishment of the freedmen.

This is not even addressing the inability of today's Choctaw freedmen descendants to access services available to registered tribal members – which was not a decision forced by the US government but due to tribal disenrollment actions. The Choctaw freedmen descendant as non tribal members cannot access any Choctaw nation services. For Example, the Choctaw Nation Housing authority requires CDIB cards to qualify for its programs. Although Chief Batton in May 2021 issued a statement calling for dialogue about freedmen citizenship, no town halls or forums to discuss freedmen citizenship have been held. [An Open Letter from Chief Gary Batton | Choctaw Nation](#). I also sent a response to the speaker which the media has also published. [Slave-owning past remains problem for Choctaws - Oklahoma Council of Public Affairs \(ocpathink.org\)](#) Based on past history, the chances of the tribe living up to its treaty obligations without federal intervention appears almost non-existent.

Chickasaw Nation:

The Chickasaw Nation together with the Choctaw Nation signed a joint treaty with the United States in 1866. The Chickasaw Nation had harsher slave and black codes than other tribes –the tribe had almost no freed blacks at the time of the Civil War. Like the Choctaw Nation, Chickasaw Nation was given the option to adopt the freedmen. During the 1870s, the tribe passed a legislative act to adopt the freedmen, but later rescinded it. I believe that the Chickasaw Nation's decision to rescind it resulted in part because of the large number of Chickasaw freedmen. Until the 20th century, the Chickasaw freedmen were stateless people. Congress allowed the Chickasaw nation to sue the United states in court of claims to determine if freedmen were members of the tribe. (see also *United States V Choctaw Nation* 193 US 115 *1904).

The Chickasaw freedmen received 40 acre allotments because there was uncertainty of whether or not they had been adopted by the Chickasaw Nation while the rolls were being made. As a result of the court rulings there

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were no Chickasaw freedmen minor rolls since the court decisions came down before the rolls were finalized. As per the court decisions, the United States government paid the Chickasaw Nation for the value of the freedmen allotments.

More than ½ of persons listed on the Chickasaw section of the Dawes rolls were listed as freedmen. Currently, the Chickasaw Nation does not register freedmen as members of the tribe, and requires CDIB cards for federal services. Based on estimated current Chickasaw Nation population of 49,000, approximately 50,000 freedmen descendants would be registered in the tribe based on extrapolation of the Dawes enrollment.

Conclusion

The freedmen have been a part of the five tribes for hundreds of years. The enslavement, discrimination, and disenrollments have occurred not through any actions of the freedmen. They were not signers of the Indian Removal Act or any other actions passed by Congress against the tribes. The ancestors of today's freedmen were not invaders, or enemy combatants but merely human beings who looked different who had little political power.

Indian is a legal term in Federal law. According to US Supreme Court case *Morton V Marcari*, 417 US 535 (1974) an Indian is a member of a Federal recognized tribe.

Some tribal leaders have opposed freedmen citizenship asserting that the freedmen are not interested in their ancestral tribal nations, are not cultural, or only interested in benefits. Some former leaders have misstated that the freedmen ancestors were squatters, or that slavery was better in the tribes than in the Deep South

The freedmen reject this reasoning. No one wants to be a slave and the same black codes against owning property, literacy, etc existed in the five tribes. The Cherokee slaves fled from the Joe Vann plantation to seek freedom in but were unsuccessful. The majority of members of the five tribes do not speak the language, worship at ceremonial grounds, participate in elections, attend council meetings, etc. There are still a few freedmen speakers of the Muscogee language living on reservations although there numbers are few. Some freedmen attend Indian churches, still live on allotments such as members of the Brown family in the Choctaw nation and the Ford family in the Creek nation. There are also members of the Prince Family living on allotments in the Chickasaw nation. Family members who are by blood tribal members attend funerals and family gatherings of freedmen relatives and vice versa . In all of the five tribes, there are tribal members who are married to persons of freedmen status. Tribal candidates attend freedmen meetings requesting support even in tribes where freedmen are not currently registered as many freedmen have family members who are registered in tribes. Currently, Creek Freedmen descendants participate in the Creek festival – attending dances, participating in the parades, and attend inauguration of Muscogee tribal leaders; the Muscogee Creek freedmen Indian band is currently sponsoring Creek language classes. Tribally registered Cherokee freedmen descendants attend language and history classes, are members of Cherokee community organizations and are on the boards of Cherokee community organizations in the DC area, the Kansas City area, North Tulsa area, and the Oakland California area. There are Cherokee tribal members of freedmen status who have mastered tribal arts – one such person was my deceased friend Mrs Rodslen Brown, who was an award winning basket maker. Cherokee

DESCENDANTS OF FREEDMEN OF THE FIVE CIVILIZED TRIBES ASSOCIATION

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freedmen tribal members are employed at Cherokee nation and Cherokee nation businesses. I myself ran for tribal council office in 2021. Placing third out of eight candidates.

The treaties are still in effect as tribal governments and tribal citizens have used in court citing the treaties. Both in criminal cases such as *McGirt* and in Civil cases such as the Arkansas Riverbed cases. The freedmen position is that the freedmen are still have their treaty rights in accordance with the treaties even if they are not tribally registered, they are to be treated the same as Indian tribal members in accordance to treaty language. . . It is the responsible of the US government to enforce the treaty.

You may ask how do we believe that the members of the Senate Committee on Indian Affairs can assist the freedmen if they accept that the treaty rights of the freedmen descendants are still valid?

1. The Department of Interior can register the freedmen descendants, giving those who provide sufficient proof a descendency of a Dawes enrollee letter acerating the person is a treaty Indian who qualifies for federal services.
2. Government departments such as Indian health service can receive directions that the freedmen with the descendance letters qualify for certain programs such as Indian Health service, tribal schools, Indian health service scholarships, or preference for jobs in the Department of Interior or the Indian Health Service. The BIA can confirm with the school, hospital, etc that the freedmen descendant is qualified as a descendant of a Dawes enrollee/treaty Indian.
3. For those services run by the tribal governments through compacts or 638 contracts, we request that the federal government set aside funds specifically for freedmen use who are not being served by their tribal governments either due to tribal council actions which block the freedmen such as in the Seminole nation or disenrollments in violation of the treaty such as in the Creek nation. We ask that HUD or other agencies initially run these programs for freedmen use . The legislation should also allow for freedmen bands, freedmen organized tribal towns, or freedmen organizations to receive funds to run the programs – contract or compact with the agencies.
4. We request Field Hearings to be held in Oklahoma by members and staff of the Senate Committee on Indian Affairs so that more voices of the freedmen people can be heard
5. We ask that the Committee request CRS reports on the status of the freedmen of the tribes.
6. We request that the inspector general’s office or other government departments run investigations on five tribes judgment funds paid out since 1971 and ascertain if freedmen were able to share in the funded programs or per capita payments made available to non freedmen tribal members.
7. We ask that audits by the Inspector general’s office be made of Seminole Nation programs to determine if and when funding numbers given to government agencies for services or covid 19 relief included the registered population.
8. We ask that the US government insure that freedmen share in the COVID relief payments in accordance with the treaties. We emphasize that the Creek freedmen have not received the four thousand dollar payments that other members of the Creek nation received in the last two years in ARPA funds although the treaty says the Creek freedmen are to share in the funds of the nation.

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9. We ask that the committee be open to legislation which ties tribal funding with compliance with the treaties similar to that proposed to Chairman Waters last year for the NAHASDA reauthorization act . Although we understand that some members do not support such legislation, such legislation has encouraged compliance with the treaties.
10. Amendments to the 1947 Stigler Act made in 1918 (Public Law 115-399) do not allow freedmen descendants whether or not registered in tribes to inherit or otherwise obtain restricted property from spouses or family members. The freedmen ask for equity so far as property rights.
11. Freedmen descendants even if tribally registered are treated differently in the criminal courts than by citizens of their tribes. My understanding is that some of this is due to pre civil War cases such as the 1846 Supreme Court case *United States V Rogers* which dealt with whether an adopted white citizen was an Indian for criminal purposes. (Judge Roger Taney of the Dred Scott decision was judge on this case). We ask that the Committee review this issue and use your authority to place all tribal members on the same footing in criminal cases.

I stress that the suggestions above do not equate to equal tribal citizenship but this would be a start whereby the US government is doing its part to live up to its treaty obligations..

Distinguished members, I thank you for the opportunity to provide this information to the Committee