

**(6) Final Determination Documents**

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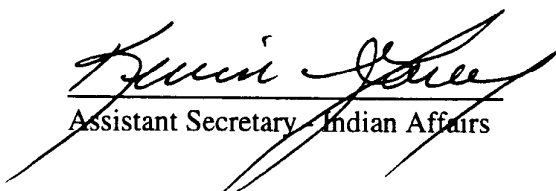
Summary Under the Criteria and Evidence for  
Final Determination against Federal Acknowledgment

of the

Yuchi Tribal Organization

Prepared in response to a petition submitted to the Assistant  
Secretary - Indian Affairs for Federal acknowledgment that  
this group exists as an Indian Tribe.

Approved: DEC 15 1999  
(date)

  
Assistant Secretary - Indian Affairs

YUCHI TRIBAL ORGANIZATION

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## YUCHI TRIBAL ORGANIZATION

### INTRODUCTION

The Yuchi Tribal Organization (YTO) of Sapulpa, Oklahoma, has petitioned for Federal acknowledgment that it is an Indian tribe. A Proposed Finding against acknowledgment of the YTO has been issued by the Assistant Secretary - Indian Affairs (Assistant Secretary). The YTO petitioner is comprised of 327 members out of an estimated population of 1,300 to 2,000 ethnic Yuchi. Thus, the petitioner represents only a portion of a larger Yuchi ethnic group. This evaluation of the YTO petition focuses on the petitioning group and its members, and does not attempt to evaluate the merits of a petition which might be presented on behalf of all the Yuchi. Thus, this review of the evidence applies only to the YTO petitioner and not to the larger Yuchi ethnic group.

For the Proposed Finding, the YTO petition was evaluated by the Department of the Interior (Department) under the provision of the acknowledgment regulations which, in certain circumstances, allows a Proposed Finding to be made on a single criterion rather than on all seven of the criteria for Federal acknowledgment. To be acknowledged as an Indian tribe a petitioner must meet all of the mandatory acknowledgment criteria specified in 25 CFR 83.7, so its failure to meet one criterion results in a finding against acknowledgment. Because the YTO petition was evaluated on a single criterion, it was not necessary for the Department to review evidence, which it otherwise would have considered, about the possible existence of a distinct social community with a unique culture, language, and religion among either the YTO or the larger Yuchi ethnic group.

#### Administrative History

The YTO petitioner submitted a letter of intent to petition for Federal acknowledgment on October 5, 1990. The BIA received the petitioner's documented petition on September 9, 1991. The BIA sent a technical assistance review letter to the YTO petitioner on September 14, 1992, to inform it of the BIA's preliminary conclusions about the deficiencies and omissions found in its petition. The BIA received additional materials from the YTO on March 23, 1993, to complete its documented petition. In a letter dated April 22, 1993, the YTO requested that its petition be placed under "active consideration."

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A notice of the negative Proposed Finding on the YTO petition was published in the Federal Register on October 24, 1995 (60 FR 54506). A copy of the Federal Register notice, the summary of the evidence relating to the criterion, and the technical report on the evidence were provided to the YTO petitioner. Copies of the same materials also were sent to interested and informed parties.

In accordance with the acknowledgment regulations, the Federal Register notice specified a 180-day public comment period on the Proposed Finding (25 CFR 83.10(i)). At the request of the YTO, two extensions of the comment period were granted. The YTO and two members of the public submitted timely comments on the Proposed Finding.<sup>1</sup> After the close of the public comment period on November 29, 1996, the YTO petitioner was given until May 5, 1997, to respond to the public comments (25 CFR 83.10(k)). The petitioner submitted a timely response.

The BIA consulted with Mr. Melvin George, the chairman of the petitioning group, about proceeding with a Final Determination on the YTO petition by telephone on May 28, 1997. The BIA notified Mr. George that it had begun consideration of the comments on the Proposed Finding in order to issue a Final Determination by letters of June 5 and July 11, 1997.

### Overview of the Proposed Finding

The Proposed Finding of the Assistant Secretary concluded that the YTO petitioner is composed principally of persons who are members of an acknowledged tribe, and therefore that the YTO does not meet criterion 83.7(f) of the acknowledgment regulations (AS-IA 1995). The Proposed Finding also concluded that the YTO petitioner does not meet any of the three required conditions under which a petitioner may be acknowledged, even though it is composed principally of members of a federally-recognized tribe, as an exception to the basic requirement of criterion 83.7(f).

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<sup>1</sup> The acknowledgment regulations provide that, after a Proposed Finding is published, the petitioner or interested parties may request a formal meeting with the researchers on the acknowledgment staff of the Bureau of Indian Affairs (BIA) "for the purpose of inquiring into the reasoning, analyses, and factual bases for the proposed finding" (25 CFR 83.10(j)(2); AS-IA 1995, 6). Neither the YTO nor any interested party requested such a meeting. Nor did the YTO or the informed parties who commented on the Proposed Finding visit or phone the BIA to seek informal technical advice for the preparation of their response to the Proposed Finding. The YTO also did not request copies of any of the documentation used by the BIA's researchers in the preparation of the Proposed Finding.

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The notice of the negative Proposed Finding on the YTO petition published in the Federal Register, and the reports prepared for the Proposed Finding, put the YTO petitioner on notice that it failed to meet criterion 83.7(f) because its membership consists principally of individuals who are enrolled members of a federally-recognized tribe. The Federal Register notice and the Proposed Finding reports also put the YTO petitioner on notice that it failed to meet all three of the conditions required to be acknowledged as an exception to the essential requirement of criterion 83.7(f).

Bases for the Final Determination

This Final Determination is based upon an evaluation of all the materials utilized for preparation of the Proposed Finding, the information submitted by the petitioner in response to the Proposed Finding and in response to third party comments, the public comments on the Proposed Finding, and the evidence collected by the BIA staff for evaluation purposes.

Abbreviations and/or Acronyms Used in the Final Determination and Technical Report

AS-IA	Assistant Secretary - Indian Affairs
BAR	Branch of Acknowledgment and Research, Bureau of Indian Affairs
BIA	Bureau of Indian Affairs
FR	FEDERAL REGISTER
MCN	Muscogee (Creek) Nation
YTO	Yuchi Tribal Organization

## YUCHI TRIBAL ORGANIZATION

### SUMMARY CONCLUSIONS UNDER THE CRITERIA

#### 83.7(f)

- 83.7(f) The membership of the petitioning group is composed principally of persons who are not members of any acknowledged North American Indian tribe. However, under certain conditions a petitioning group may be acknowledged even if its membership is composed principally of persons whose names have appeared on rolls of, or who have been otherwise associated with, an acknowledged Indian tribe. The conditions are that the group must establish that it has functioned throughout history until the present as a separate and autonomous Indian tribal entity, that its members do not maintain a bilateral political relationship with the acknowledged tribe, and that its members have provided written confirmation of their membership in the petitioning group.**

The Proposed Finding of the Assistant Secretary on the petition for Federal acknowledgment submitted by the Yuchi Tribal Organization (YTO) concluded that the YTO did not meet criterion 83.7(f) of the acknowledgment regulations (AS-IA 1995). The requirement of criterion 83.7(f) is that, for a petitioning group to be acknowledged through these regulations, its membership must be composed “principally of persons who are not members of any acknowledged North American Indian tribe” (25 CFR 83.7(f)). The evidence used for the Proposed Finding showed that 92 percent of YTO members are also enrolled members in a federally-recognized tribe, the Muscogee (Creek) Nation (MCN). Thus, the Proposed Finding concluded that the YTO petitioner is composed principally of persons who are members of an acknowledged tribe.

Criterion 83.7(f) of the acknowledgment regulations provides, however, for an exception in which a petitioner may be acknowledged even though it is composed principally of members of a federally-recognized tribe. The intent of the administrative regulations is to deny the acknowledgment of “Splinter groups, political factions, communities or groups of any character that separate from the main body of a currently acknowledged tribe,” while providing that groups may be acknowledged even though they have been associated

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with an acknowledged tribe if they “can establish clearly that they have functioned throughout history until the present as an autonomous tribal entity” (25 CFR 83.3(d)). In order to benefit from the exception to criterion 83.7(f), a petitioner must demonstrate that it satisfies three conditions: that it has functioned throughout history as an autonomous tribal entity, that its members do not maintain a bilateral political relationship with the acknowledged tribe, and that its members have provided written confirmation of their membership in the petitioning group (25 CFR 83.7(f)). The Proposed Finding concluded that the YTO petitioner did not meet any of these three conditions, and thus did not qualify for the exception to the basic requirement of criterion 83.7(f).

The YTO petition for Federal acknowledgment was evaluated under 25 CFR 83.10(e), the section of the acknowledgment regulations which provides for an expedited Proposed Finding on a single criterion when the documented petition and the petitioner’s response to the preliminary technical assistance review of the petition by the Bureau of Indian Affairs (BIA) indicates that there is little or no evidence that the petitioner can meet one of three specified criteria, in this case criterion 83.7(f). An evaluation of a single criterion for an expedited negative Proposed Finding occurs only after the petitioner has had the opportunity to respond to the technical assistance review of its petition materials (59 FR 9290). The YTO petitioner submitted additional materials in response to the BIA’s technical assistance review letter and requested that its petition be placed under “active consideration,” thus indicating that it considered its petition to be complete. An expedited evaluation of a petition on a single criterion, as in this case, occurs only after the documented petition is complete and before the petition is placed under “active consideration” (25 CFR 83.10(e)).

Under the regulations (25 CFR 83.5(c), 83.6), the petitioner has the burden of establishing that it is entitled to be acknowledged as existing as an Indian tribe. The petitioner’s failure to meet any one of the mandatory criteria in section 83.7 results in a finding against acknowledgment (25 CFR 83.10(m)). If the Assistant Secretary’s review of the petition finds that the evidence “clearly establishes” that the group does not meet one of the mandatory criteria in paragraphs 83.7(e), (f), or (g), the Assistant Secretary shall issue an expedited Proposed Finding denying acknowledgment (25 CFR 83.10(e)(1)). Because the evidence in this case, at the time of the Proposed Finding, clearly established that the petitioner did not meet criterion 83.7(f), it was, therefore, not necessary for the Proposed Finding to discuss the evidence relating to the other six criteria, or to conclude whether or not the petitioner met those criteria (25 CFR 83.10(e)(1)).

Publication of the expedited Proposed Finding gives notice that the petition is now under active consideration (25 CFR 83.10(f)), and starts the process and time periods established in paragraphs 83.10(h) through (l). The expedited Proposed Finding limits the inquiry for the Final Determination to a single criterion. In response to an expedited



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Proposed Finding, the petitioner or third parties must provide evidence for the Final Determination that the petitioner meets the criterion in question under the “reasonable likelihood of the validity of the facts” standard (25 CFR 83.6(d)), the standard which applies to the evaluation of petitions under active consideration. The ultimate burden of establishing that the petitioner is entitled to be acknowledged as an Indian tribe always remains on the petitioner. If in response to the expedited Proposed Finding, the petitioner or third parties provide sufficient evidence to meet the single criterion under which the Proposed Finding was issued, then the BIA undertakes a full evaluation of the documented petition under all seven of the mandatory criteria.

If the petitioner or third parties fail to provide sufficient evidence that the petitioner meets the criterion analyzed in the expedited Proposed Finding under the “reasonable likelihood” standard, the Assistant Secretary issues a Final Determination based solely on that single criterion, in this case criterion 83.7(f). This Final Determination on the YTO petition is issued based on the conclusion that neither the YTO nor the third parties who responded to the Proposed Finding have shown that the YTO meets criterion 83.7(f) under the “reasonable likelihood of the validity of the facts” standard.

### Comments on the Proposed Finding:

After a Proposed Finding is issued, the acknowledgment regulations provide that the petitioner and members of the public may comment on the finding, and that their arguments and evidence will be considered in the preparation of the Final Determination (25 CFR 83.10(i)). The YTO petitioner and two individuals, Dorothy A. Matern of Turlock, California, and David K. Hackett of Knoxville, Tennessee, submitted comments on the Proposed Finding during the public comment period.<sup>2</sup> The regulations provide for two kinds of third parties. The comments of Matern and Hackett are considered to be the comments of “informed parties” rather than “interested parties” because they claimed no material interest in the case (25 CFR 83.1). Matern’s comments were submitted as letters dated January 5, May 16, October 21, and November 25, 1996. Her May 16 letter also contained excerpts from a research paper she had written. Hackett’s comments were submitted as letters dated April 20, July 29, and November 29, 1996. The YTO

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<sup>2</sup> The Department received one unsolicited comment from an informed party after the close of the public comment period on November 29, 1996. This comment was a letter, dated March 21, 1997, from Dorothy Matern. Pursuant to Section 83.10(l)(1), unsolicited comments submitted after the close of the response period “will not be considered in the preparation of a final determination.” This comment was forwarded to the Office of the Solicitor for retention and submission to the Interior Board of Indian Appeals in the event of an appeal, or to the Assistant Secretary - Indian Affairs in the event of a remand. The unsolicited comment was not considered for purposes of this Final Determination.

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submitted a response to the Proposed Finding, dated November 29, 1996, which consisted of a 3-page cover letter, a 13-page statement, and 24 pages of documents. The petitioner replied to the public comments in letters dated April 29 and May 2, 1997.

The YTO's response to the Proposed Finding does not directly respond to the conclusion that most YTO members are also MCN members, does not suggest that the percentage of MCN membership or the number of MCN members are wrong, and does not claim that the evidence of membership on which the calculation is based is erroneous. The YTO petitioner argues, however, that "we are a member of the said [Muscogee] nation," as the result of the "forced assimilation" of the Yuchi as citizens of the Creek Nation (YTO 1996b, 7; 1997a, encl. [p.2]). Hackett contends that the Yuchi have chosen to participate in the only Indian political system available to them after the United States "arbitrarily" designated them as part of the Creek confederacy (Hackett 1996a, 2). Matern states that "some Yuchi people have aligned themselves with the Creek nation," but asserts that "many more Yuchi do not" (Matern 1996a, 1). She does not identify such independent Yuchi, however, nor claim that they are members of the YTO. Thus, the petitioner and commenters accept the finding that most YTO members are also MCN members, but argue that it should be disregarded because of historical considerations.

In its comments, the YTO argues that the Proposed Finding continues "the arbitrary misidentification of the Yuchi as a Creek People," and asserts that "we are not Creek as claimed. . . ." (YTO 1996a, 2). Hackett also argues that the evidence does "not support the BIA's determination that the Yuchi are a Creek People. . . ." (Hackett 1996b, 2). The Proposed Finding did not claim that the Yuchi are a Creek or Muscogee people, but discussed the YTO petitioner as part of a "Yuchi ethnic group" (AS-IA 1995, 11, 17). The Proposed Finding stated a factual conclusion that most YTO members are currently enrolled members of a federally-recognized tribe, the MCN. The YTO and Hackett contend that the MCN membership of YTO members stems from a historical misidentification of the Yuchi, or a misunderstanding of the Yuchi alliance with the Creek. Hackett argues that the Yuchi were designated by the Government as a part of the Creek Nation during their removal to Oklahoma in the 1830's (Hackett 1996a, 2-3). The YTO argues that the Yuchi were arbitrarily labeled as Creeks by the Dawes Commission on its Dawes Roll of 1907 (YTO 1996b, 9-10).

The Department did not evaluate the commenters' historical arguments, and neither disputes nor confirms them, because the focus of criterion 83.7(f) is on whether or not the petitioner's members are enrolled in a federally-recognized tribe at present. Although the definitions of "political influence" and "autonomous" in section 83.1 require those concepts to be understood in the context of the group's history (see also the reference to historical situations in section 83.6(e)), in this case the historical considerations raised by the commenters do not impact the evaluation of the requirements of the conditions for an exception set forth in criterion 83.7(f). The crucial issue is not how the Yuchi historically

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became part of the Creek confederacy and how Yuchi individuals became eligible to be MCN members. The relevant historical consideration, which is discussed below, is whether the petitioning group historically maintained its autonomy as a group despite its members' nominal membership in a federally-recognized tribe.

Matern objects to the Proposed Finding because she says that the finding was based on a "census" taken by the BIA, when it actually was based on a membership list created and submitted by the YTO.<sup>3</sup> Matern's comments are directed toward the entire Yuchi ethnic group rather than to the YTO petitioner. She contends that BIA researchers evaluating the petition conducted an incomplete, "selective," and "random census" of the Yuchi people (Matern 1996a, 2; 1996c, 2). A BIA researcher conducted a random survey of individuals listed on the petitioner's membership list in order to interview some YTO members, but did not create a census of the ethnic Yuchi. Matern suggests that the Proposed Finding may be in error because individuals with parents of different ethnicity may have been counted on two tribal censuses (Matern 1996a, 2). The Proposed Finding, however, was not based on a classification or census of the Yuchi prepared by the BIA. Rather, the BIA's researcher compared the names on the membership list of the YTO to the names in the membership database of the MCN (AS-IA 1995, 12, 15). The YTO membership list was prepared by the YTO, not by the BIA. The MCN roll is maintained by the MCN, not by the BIA. Because individuals must apply to become MCN members, YTO members are also members of the MCN because of their own actions.

The YTO raises questions about the BIA's use of a series of reports prepared under the direction of Professor Morris Foster of the University of Oklahoma. These reports were submitted by Foster in support of the petition of the YTO at the request of another Yuchi organization, the E.U.C.H.E.E. The petitioner suggests that the reports "may contain false or inaccurate statements," without identifying any specific errors (YTO 1997a, encl.). Rather than objecting to specific examples of the BIA's use of this evidence, the petitioner asks how much weight was given to these reports in the Proposed Finding. The use of these reports in the Proposed Finding was indicated with specific source citations. The Foster reports were cited as evidence of the persistence of separate Yuchi ceremonial grounds and churches, which is supportive of the YTO petitioner's claims that the larger Yuchi ethnic group has maintained some characteristics of a distinct culture (AS-IA 1995, 18). The reports submitted by Foster focus on the entire Yuchi ethnic group, without specifically evaluating the YTO petitioner, as the Department must do. It was not necessary under criterion 83.7(f), however, for the Proposed Finding to evaluate whether

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<sup>3</sup> The BIA only evaluates groups under 25 CFR 83 which themselves request to go through the acknowledgment process. The BIA bases its analysis of all the criteria for acknowledgment on the group defined by the membership list submitted by the petitioner. The BIA does not place individuals on or remove individuals from a petitioner's membership list, which, as for recognized tribes, is under the control of the petitioner.

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or not the YTO petitioner has maintained a distinct culture or community. The Foster reports were not cited as a basis for concluding that the YTO failed to meet criterion 83.7(f). The YTO's remarks about the Foster reports provide no basis for changing any conclusion in the Proposed Finding.

The YTO and Matern charge that after the Proposed Finding, and after the petitioner had begun its research to prepare its reply, the BIA changed the issue which the petitioner would have to address. According to the YTO, it "first learned that the issue was now political instead of an historical factor" when it received a letter of September 23, 1996, from the Assistant Secretary (YTO 1996b, 12). This letter was a reply to a YTO request for an extension of the comment period in which YTO chairman Melvin George claimed that the extra time was necessary in order "to respond to the additional genealogical information requested by the Bureau of Indian Affairs. . . ." (George 1996). The Assistant Secretary noted that "the proposed finding did not question your genealogy" and that the BIA had not requested additional genealogical information after the Proposed Finding (AS-IA 1996). In its comments, the YTO asks, "if genealogical records were no longer necessary, why were we not notified so we could have been preparing our arguments on the political status of our Tribe?" (YTO 1996b, 1). The Proposed Finding itself provided that notice, and the Assistant Secretary's letter sought to clarify the matter by reminding the YTO to respond to the issues raised by the Proposed Finding on criterion 83.7(f).

Matern says that after the Proposed Finding the BIA took "a new position that it no longer considers racial, biological or genealogical information necessary or relevant to the Yuchi position" (Matern 1996c, 1). This claim appears to refer both to the Assistant Secretary's letter of September 23, 1996, and to a letter of July 1, 1996, from the BIA to Phyliss Bartram. On the issue of biology and race, Bartram had requested an explanation of the Proposed Finding in view of her belief in the "biological uniqueness" of the Yuchi and her suggestion that recognition be based on DNA testing (Bartram 1996). In reply, the BIA noted in its letter of July 1 that the Federal Government "recognizes political sovereignty rather than biological uniqueness" because the Federal relationship with Indian tribes is a government-to-government relationship rather than a racial relationship (BIA 1996). This was not a new position on the part of the BIA. On the issue of genealogy, the acknowledgment regulations, in criterion 83.7(e), require a petitioner to present genealogical evidence to demonstrate that its members descend from a historical Indian tribe, but the Proposed Finding on the YTO petition did not conclude that the petitioner failed to meet criterion 83.7(e). The BIA's letter to Bartram did not represent a change from the Proposed Finding, because "racial, biological or genealogical" information was not the basis for the Proposed Finding which evaluated evidence under criterion 83.7(f) alone.

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The YTO and Matern object to the BIA having obtained information from sources other than the YTO and portray the BIA's research as biased. The YTO says that the BIA relied on a "biased and one-sided view from vested opponents" (YTO 1997b, 1). Matern says that BIA researchers used "unauthorized sources" and gathered material "from the MCN, not from the YTO" (Matern 1996c, 1, 2). She dismisses any evidence obtained from the MCN or its newspaper as "biased information" (Matern 1996c, 2). The Department does not accept the position that some sources may be excluded from consideration, nor the assumption that information from the MCN is "biased." As part of every acknowledgment evaluation BIA researchers consult multiple sources when and where they are available. There is no source for obtaining MCN membership data other than the MCN. The MCN newspaper is a valid source for information on MCN politics. A BIA researcher visited the YTO and attended a YTO meeting. Because the YTO submitted a petition for Federal acknowledgment, it had the opportunity to state its case fully and to present all the evidence it desired. That evidence was considered by the Department. Under 25 CFR 83.10(a) and (1), the Assistant Secretary may initiate other research for any purpose relative to analyzing the documented petition and obtaining information about the petitioner's status. Pursuant to these provisions of the regulations, the BIA researchers supplemented the petitioner's documentation with research in other sources for both the Proposed Finding and this Final Determination.<sup>4</sup>

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<sup>4</sup> Matern charges that a BIA researcher conducted research on the YTO under "false pretenses" because she declared that she was in Oklahoma on a personal "vacation" and an "unofficial" visit (Matern 1996c, 2). The YTO repeats this charge (YTO 1997a, encl.; 1997b, 2). Matern and the YTO claim that such statements were recorded, but they did not submit a tape recording or a transcript of it as evidence to be considered in preparation of the Final Determination. These allegations appear to be based on a simple misunderstanding of the BIA researcher's comments. The BIA researcher clearly identified herself as a researcher from the BIA who was evaluating the YTO petition. Her reference to a vacation referred to a single day on which she agreed to meet with the YTO (Saturday, December 31), and not to her entire field trip. Because the purpose of her research was to determine whether a Proposed Finding could be issued under the "expedited" provisions of the acknowledgment regulations, she was conducting an initial review of the petition under a single criterion and not the official field work which would have occurred had the petition been under "active consideration." Neither Matern nor the YTO have specified what data they believe were obtained by the alleged misrepresentation which otherwise would have been unavailable to the BIA researcher. They provide no valid reason to disregard this field data.

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Evidence of Membership in a Federally-Recognized Tribe:

The YTO submitted as part of its petition a membership list which contained 165 names.<sup>5</sup> During the evaluation of the petition, the YTO petitioner submitted a second list of names of members which increased its claimed membership to 327. Independent scholars have estimated the current population of ethnic Yuchi at about 2,000 persons, while a 1956 list of the ethnic Yuchi created by S.W. Brown, Jr., in connection with Yuchi land claims included 1,299 names (AS-IA 1995, 18). One of the commenters states that the ethnic Yuchi consist of 1,320 people (Matern n.d., 4). These estimates refer to a group of Yuchi descendants which is several times larger than the petitioner, and which has not been evaluated for this Final Determination because it is not the petitioner.

Because the second YTO membership list of 327 individuals did not include the identifying information on members -- date of birth, maiden name, and address -- required by the acknowledgment regulations (25 CFR 83.7(e)(2)), it was not used in the Proposed Finding (AS-IA 1995, 15). The lack of this identifying information made it impossible to determine whether similar names on the YTO list and the MCN roll referred to the same person or different persons. An acceptable conclusion on the percentage of individuals on the second, or 1995, YTO membership list who were enrolled in a federally-recognized tribe was therefore not possible at that time. The Proposed Finding reported that the research by the BIA had determined that 151 of the 165 individuals on the first, or 1991, YTO membership list, or 92 percent of them, are members of the MCN (AS-IA 1995, 16; BIA 1994). Neither the comments of the petitioner nor the public comments dispute the basic conclusion of the Proposed Finding that almost all of the YTO petitioner's members are also members of the MCN.

Five months after the deadline given to the YTO petitioner to submit additional membership data for the Proposed Finding, the YTO submitted genealogical charts for

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<sup>5</sup> The original, or 1991, membership list submitted by the YTO contained roll numbers 1-176. The YTO also submitted a genealogical chart for each individual on the list (YTO 1991). Although # 153 was missing from the list, this individual was identified by his genealogical chart. The list included 14 individuals who were designated as "associate" members. In addition, the YTO provided a genealogical chart for 6 individuals whose applications for membership were pending; 3 of those applications were designated as being for "associate" membership. Neither the "associate" members nor the applicants for "associate" membership were included in the analysis of MCN enrollment for the Proposed Finding. The individuals with pending applications for regular membership were included in that analysis. Therefore, the analysis in the Proposed Finding of the enrollment of YTO members in the MCN was based on the 176 individuals on the 1991 YTO membership list, minus the 14 "associate" members on the list, plus the 3 individuals with pending applications for regular membership, for a total of 165 YTO members.

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almost all of the new members on its second list. The YTO submitted its second list on January 30, 1995, and the genealogical charts for the new members on that list on June 30, 1995. Because the submission of that genealogical data was received after the Department had begun its deliberations on the Proposed Finding, that information was not considered for the Proposed Finding. It has been considered, however, for this Final Determination. The second list is a compilation of names only, and thus does not provide all the information required for membership lists by criterion 83.7(e) of the regulations (YTO 1995a). However, because the genealogical charts do supply a date of birth for YTO members, this additional information enables the BIA to use the second membership list because it makes it possible to determine whether individuals on the second YTO membership list are also on the MCN roll (YTO 1995b). Thus, this Final Determination is based on the second, or 1995, YTO membership list of 327 members (YTO 1995a).<sup>6</sup>

A check of the MCN citizenship database by the BIA has revealed that 278 of the 327 individuals on the 1995 YTO membership list, or 85 percent of them, are members of the MCN (BIA 1994, 1997).<sup>7</sup> The likelihood that a YTO member is dually enrolled in the MCN, however, is related to his or her age. The adult members of the YTO, those born in 1977 or earlier and thus 18 or older in 1995, are more likely to be enrolled members of the MCN than are YTO minors. The expansion of YTO membership from 1991 to 1995 consisted disproportionately of adding minors to the list. Because YTO minors are less likely than YTO adults to belong to the MCN, adding minors to the YTO list had the effect of reducing the percentage of YTO members who are also members of the MCN. The pattern evident in the data suggests, however, that more of the minors will join the MCN as they age. The BIA's research reveals that 64 percent (9 of 14) of YTO members of unknown age, 71 percent (74 of 104) of YTO minors, and 93 percent (195 of 209) of

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<sup>6</sup> The second, or 1995, membership list submitted by the YTO contains roll numbers 1-327. The YTO also submitted a genealogical chart for almost all individuals on the list. The "associate" members on the original 1991 list are not included on the 1995 list. The individuals with "pending" applications for regular membership in 1991 are included as members on the 1995 list. Only one of the 165 regular members on the 1991 list is not included on the 1995 list. Therefore, the 1995 list consists of 164 original members plus 163 new members.

<sup>7</sup> This total of 278 MCN members does not include two YTO members counted as MCN members for the Proposed Finding. Although a YTO member (#102 on both the 1991 and 1995 lists), a minor, was identified by sources for the Proposed Finding as an enrolled MCN member, he has not been counted as a MCN member for the Final Determination because his MCN roll number is not known. Another YTO member (#175 on the 1991 list and #160 on the 1995 list) has not been counted as a MCN member for the Final Determination because it was recognized in a review of the evidence that it was this individual's father of the same name (Sr.) rather than the individual himself (Jr.) whose MCN membership was verified for the Proposed Finding.

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YTO adults are MCN members.<sup>8</sup> These data reveal that the membership of the YTO petitioner is composed principally of members of a federally-recognized tribe.<sup>9</sup>

Conditions for an Exception:

Criterion 83.7(f) provides for an exception for a petitioner that is comprised principally of persons who are members of an acknowledged tribe if it can be shown that the enrollment of these individuals in the recognized tribe is merely nominal rather than substantive. The exception to the basic requirement of criterion 83.7(f) is tested by three conditions. To meet criterion 83.7(f), the YTO petitioner must demonstrate that, despite the inclusion of its members on the MCN roll, it meets all three of these conditions. Neither the comments of the petitioner nor the public comments attempt to demonstrate that the petitioner satisfies all three conditions necessary to qualify for an exception to the requirement of criterion 83.7(f).

The YTO and the commenters have not responded in any way to the **third condition** which requires that the petitioner's members must have provided "written confirmation of their membership in the petitioning group" (25 CFR 83.7(f)). The Proposed Finding concluded that only 6 of the 165 members on the first YTO membership list had provided an implied confirmation of their intention to be members of the petitioner's organization (AS-LA 1995, 32-33). Some of the genealogical charts submitted for individuals on the second list of YTO members contain the member's signature. These signatures are not explicit confirmation of an individual's willingness to belong to the petitioning group. Even if the signatures were considered to be such an explicit confirmation, they were provided by less than one-tenth of the 327 individuals on the second YTO membership list. Because sufficient confirmations have not been supplied by the YTO, it clearly does not satisfy one of the three conditions of the regulations which must be met in order to be acknowledged as an exception to the basic requirement of criterion 83.7(f).

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<sup>8</sup> The 1995 YTO membership list is annotated to indicate that five members are now deceased. No attempt has been made to determine whether other YTO members have died. If these five deceased members are excluded from the analysis of the 1995 YTO membership list, then 273 of 322 YTO members, still 85 percent of members, and 190 of 204 adults, still 93 percent of adults, are members of the MCN.

<sup>9</sup> Criterion 83.7(f) limits the authority of the Assistant Secretary to acknowledge a petitioner when it consists principally of persons who are members of an acknowledged North American Indian tribe, even though Federal law does not prohibit dual enrollment among recognized tribes.



### Summary under the Criteria, Final Determination: Yuchi Tribal Organization

The **second condition** requires that the petitioner's members "do not maintain a bilateral political relationship" with an acknowledged tribe (25 CFR 83.7(f)). On this condition, the Proposed Finding concluded both that individuals gave their consent to be on the MCN roll by applying for membership, and that a MCN Citizenship Board acted to accept individuals as members (AS-IA 1995, 9, 15). This reciprocal consent demonstrates that the political relationship between the MCN and its members, including those who also are on the YTO membership list, is a bilateral relationship under the regulations. The YTO and commenters Matern and Hackett have not disputed the conclusions of the Proposed Finding that to become a MCN member an individual must apply for membership and the MCN must approve the application. This Final Determination clarifies the Proposed Finding by noting that for the purposes of criterion 83.7(f) a bilateral political relationship with a federally-recognized tribe is presumed to exist when it can be demonstrated that reciprocal consent was involved in the process by which an individual came to be included on the tribal roll of a federally-recognized tribe. Because, as a recognized tribe, the MCN has a functioning political process, a presumption can be made that a member of the MCN participates in a bilateral political relationship with a recognized tribe.<sup>10</sup>

Although this presumption is rebuttable, in this case the presumption is confirmed because the evidence shows the actual participation of YTO members in MCN governmental activities. The Proposed Finding presented evidence that, since 1962, YTO members and other Yuchi individuals have participated in the MCN political process by holding office or positions in the MCN government, participating in MCN elections, and utilizing the MCN judicial system (AS-IA 1995, 8-9, 12, 16, 21-32). Neither the YTO nor the public commenters have disputed any of the specific examples of such participation presented in the Proposed Finding. The primary argument advanced by the YTO and the commenters is that participation in MCN governmental affairs by Yuchi individuals does not constitute "official representation" of the Yuchi as a group (YTO

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<sup>10</sup> An analysis of the existence of a bilateral political relationship under criterion 83.7(f) poses a different question than it does under criterion 83.7(c). Criterion 83.7(f) asks about the relationship of individuals to a federally-recognized tribe, which, by definition, is a political entity. Criterion 83.7(c), however, asks about the relationship of individuals to a petitioning group, which must demonstrate that it is a political entity. When it is established that a political entity exists, as under criterion 83.7(f), it is consistent to assume that a bilateral political relationship exists when individuals consent to be on the tribal roll of the acknowledged tribe. Thus, the inquiry under criterion 83.7(f) is whether or not such consent exists. When it is not established that a political entity exists, as under criterion 83.7(c), there can be no presumption that bilateral political relations occur merely because a petitioning group has a membership list of individuals who have applied for membership. Thus, the inquiry under criterion 83.7(c) is whether or not a political entity exists, which requires an analysis of whether the group exercises political influence and authority over its members as well as whether such authority has existed continuously.

#### Summary under the Criteria, Final Determination: Yuchi Tribal Organization

1996a, 1-2; 1997a, encl.; Hackett 1996c, 4; Matern 1996d, 1). The acknowledgment regulations, however, require an analysis of whether or not a petitioner's individual "members" maintain a bilateral political relationship with an acknowledged tribe (25 CFR 83.7(f)). Because the evidence shows that YTO members who are also members of the MCN have consented to participate, and do participate, in a bilateral political relationship with a federally-recognized tribe, the YTO petitioner does not meet a condition of the regulations.

The **first condition** requires the petitioning group to have functioned "throughout history until the present" as an "autonomous" tribal entity (25 CFR 83.7(f)). The acknowledgment regulations define "autonomous" as "the exercise of political influence or authority independent of the control of any other Indian governing entity" (25 CFR 83.1). On this condition, the Proposed Finding noted that the leaders of the YTO explicitly stated that the YTO is not the governing body of a Yuchi tribe (AS-IA 1995, 11). Nor did the Proposed Finding locate any evidence that, prior to the formation of the YTO petitioner in 1989, its current members had "formed a distinct group within the greater Yuchi ethnic group" (AS-IA 1995, 9). The Proposed Finding also concluded that the Yuchi do not consider any of the MCN "chartered communities" in which they presently participate to represent a continuation of a historical Yuchi "tribal town" of the Creek Nation (AS-IA 1995, 26). The petitioner and the commenters have not refuted these conclusions. This Final Determination clarifies the Proposed Finding, which merged the analysis of the first two conditions of criterion 83.7(f), by noting that for the purposes of the first condition the petitioner must demonstrate that the YTO as a group has been an autonomous entity throughout history, which includes the recent past and the present.

The main focus of the comments of the YTO, Hackett, and Matern is an attempt to demonstrate that there was an autonomous Yuchi tribal entity in the past. To the extent that these commenters cite specific examples of Yuchi political autonomy, they refer almost exclusively to the Yuchi at a time before their removal from the Southeast to Oklahoma in the 1830's (YTO 1996a, 3; 1996b, 3, 6, 8; 1997b, 1. Hackett 1996a, 2; 1996b, 1, 2; 1996c, 3). Because they have provided very little information about the post-removal period of the 19th century and almost no discussion of the 20th century, their historical recitation does not examine Yuchi autonomy throughout history until the present. This Final Determination neither accepts nor rejects their arguments about the historical Yuchi ethnic group because this determination evaluates the YTO petitioner, not the ethnic Yuchi, and because it is not necessary to evaluate Yuchi historical autonomy in view of the failure of the commenters to demonstrate that the YTO petitioner currently exercises authority as a political entity autonomous of the MCN. Because the petitioner says that it is not now the governing body of a Yuchi tribe, and because the available evidence does not show that the YTO organization is an autonomous tribal entity at present, the available evidence is insufficient to demonstrate

**Summary under the Criteria, Final Determination: Yuchi Tribal Organization**

that the YTO petitioner has been an autonomous tribal entity throughout history until the present, as required by a condition of the regulations.

Summary:

The evidence reveals that the petitioning Yuchi Tribal Organization fails to meet the requirement of criterion 83.7(f) that it be composed principally of individuals who are not members of a federally-recognized tribe. The petitioner and the public commenters have not challenged the conclusion of the Proposed Finding that almost all members of the Yuchi Tribal Organization are also enrolled members of the Muscogee (Creek) Nation. This Final Determination slightly amends the Proposed Finding by considering a second YTO membership list and by concluding that 85 percent of the 327 YTO members, and 93 percent of the adult YTO members, on this list are members of the federally-recognized MCN. These data reveal that the membership of the YTO petitioner is composed principally of members of a federally-recognized tribe.

The evidence does not show that the petitioner meets all three of the conditions necessary to meet criterion 83.7(f) despite being composed principally of individuals who are members of a federally-recognized tribe. On the first condition, the petitioner and the public commenters have not demonstrated that the YTO petitioner has been a politically autonomous entity in the modern era, and, therefore, throughout history. In addition, the petitioner's leaders have stated that the YTO is not the governing body of a Yuchi tribe. On the second condition, the evidence indicates that YTO members have maintained a bilateral political relationship with the MCN by applying for MCN membership and being accepted as members by the MCN. In addition, individual YTO members have participated extensively in the MCN political and judicial systems since 1962. On the third condition, the members of the YTO have not provided written confirmations of their intention to belong to the petitioning group. Thus, the YTO petitioner clearly does not meet this condition of the acknowledgment regulations.

Because the YTO petitioner and the public commenters have offered no new evidence or arguments which refute the Proposed Finding, and because the available evidence demonstrates that the YTO does not meet either the basic requirement of criterion 83.7(f) or the three conditions required for an exception to this requirement, this Final Determination affirms the Proposed Finding. Neither the petitioner nor the commenters have demonstrated, by the standard of a "reasonable likelihood of the validity of the facts," that the YTO petitioner meets the requirements of criterion 83.7(f). Because the Yuchi Tribal Organization fails to meet criterion 83.7(f), one of the mandatory requirements, it does not meet all seven of the mandatory requirements for Federal acknowledgment of its existence as an Indian tribe. For these reasons, the Department is

**Summary under the Criteria, Final Determination: Yuchi Tribal Organization**

prohibited from acknowledging this petitioner through the acknowledgment regulations (25 CFR 83) of the administrative process of Federal recognition.

A request for reconsideration of this Final Determination on the petition of the YTO for Federal acknowledgment may be filed with the Interior Board of Indian Appeals. Such a request may be filed by the petitioner or any "interested party" within 90 days after the date of publication of this determination in the Federal Register (25 CFR 83.11(a)). When a Final Determination is negative, the regulations direct that the petitioner be informed of alternatives to this administrative process for achieving the status of a federally-recognized Indian tribe, or other means by which the petitioner's members may become eligible for services and benefits as Indians (25 CFR 83.10(n)). The United States Congress has the power to recognize tribes. Because the evidence in this case reveals that the YTO petitioner comprises only a portion of the Yuchi ethnic group, however, this petitioner may not represent the intentions of that group. Almost all of the petitioner's members already are eligible for Federal services as Indians through their membership in the MCN.

Technical Report

for the

Final Determination on the Petition for Federal Acknowledgment

of the

Yuchi Tribal Organization

## YUCHI TRIBAL ORGANIZATION

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## YUCHI TRIBAL ORGANIZATION

### TECHNICAL REPORT FOR THE FINAL DETERMINATION

#### Introduction

The Yuchi Tribal Organization (YTO) of Sapulpa, Oklahoma, has petitioned for Federal acknowledgment that it is an Indian tribe. A Proposed Finding against acknowledgment of the YTO has been issued by the Assistant Secretary - Indian Affairs (Assistant Secretary). The YTO petitioner is comprised of 327 members out of an estimated population of 1,300 to 2,000 ethnic Yuchi. Thus, the petitioner represents only a portion of a larger Yuchi ethnic group. This evaluation of the YTO petition focuses on the petitioning group and its members, and does not attempt to evaluate the merits of a petition which might be presented on behalf of all the Yuchi. Thus, this review of the evidence applies only to the YTO petitioner and not to the larger Yuchi ethnic group.

For the Proposed Finding, the YTO petition was evaluated by the Department of the Interior (Department) under the provision of the acknowledgment regulations which, in certain circumstances, allows a finding to be made on a single criterion rather than on all seven of the criteria for Federal acknowledgment. To be acknowledged as an Indian tribe a petitioner must meet all of the mandatory acknowledgment criteria specified in 25 CFR 83.7, so its failure to meet one criterion results in a finding against acknowledgment. Because the YTO petition was evaluated on a single criterion, it was not necessary for the Department to review evidence, which it otherwise would have considered, about the possible existence of a distinct social community with a unique culture, language, and religion among either the YTO or the larger Yuchi ethnic group.

#### Administrative History

The YTO petitioner submitted a letter of intent to petition for Federal acknowledgment on October 5, 1990. The BIA received the petitioner's documented petition on September 9, 1991. The BIA sent a technical assistance review letter to the YTO petitioner on September 14, 1992, to inform it of the BIA's preliminary conclusions about the deficiencies and omissions found in its petition. The BIA received additional materials from the YTO on March 23, 1993, to complete its documented petition. In a letter dated April 22, 1993, the YTO requested that its petition be placed under "active consideration."

#### **Technical Report, Final Determination: Yuchi Tribal Organization**

A notice of the negative Proposed Finding on the YTO petition was published in the Federal Register on October 24, 1995 (60 FR 54506). A copy of the Federal Register notice, the summary of the evidence relating to the criterion, and the technical report on the evidence were provided to the YTO petitioner. Copies of the same materials also were sent to interested and informed parties.

In accordance with the acknowledgment regulations, the Federal Register notice specified a 180-day public comment period on the Proposed Finding (25 CFR 83.10(i)). At the request of the YTO, two extensions of the comment period were granted. The YTO and two members of the public submitted timely comments on the Proposed Finding.<sup>1</sup> After the close of the public comment period on November 29, 1996, the YTO petitioner was given until May 5, 1997, to respond to the public comments (25 CFR 83.10(k)). The petitioner submitted a timely response.

The BIA consulted with Mr. Melvin George, the chairman of the petitioning group, about proceeding with a Final Determination on the YTO petition by telephone on May 28, 1997. The BIA notified Mr. George that it had begun consideration of the comments on the Proposed Finding in order to issue a Final Determination by letters of June 5 and July 11, 1997.

#### **The Proposed Finding:**

The Proposed Finding of the Assistant Secretary on the petition for Federal acknowledgment submitted by the YTO concluded that the YTO did not meet criterion (f) of the acknowledgment regulations (AS-IA 1995). The requirement of criterion (f) is that, for a petitioning group to be acknowledged through these regulations, its membership must be composed "principally of persons who are not members of any acknowledged North American Indian tribe" (25 CFR 83.7(f)). The evidence used for the Proposed Finding showed that 92 percent of YTO members are also enrolled members in a federally-recognized tribe, the Muscogee (Creek) Nation (MCN). Thus, the Proposed Finding concluded that the YTO petitioner is composed principally of persons who are members of an acknowledged tribe.

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<sup>1</sup> The acknowledgment regulations provide that, after a Proposed Finding is published, the petitioner or interested parties may request a formal meeting with the researchers on the acknowledgment staff of the Bureau of Indian Affairs (BIA) "for the purpose of inquiring into the reasoning, analyses, and factual bases for the proposed finding" (25 CFR 83.10(j)(2); AS-IA 1995, 6). Neither the YTO nor any interested party requested such a meeting. Nor did the YTO or the informed parties who commented on the Proposed Finding visit or phone the BIA to seek informal technical advice for the preparation of their response to the Proposed Finding. The YTO also did not request copies of any of the documentation used by the BIA's researchers in the preparation of the Proposed Finding.



## Technical Report, Final Determination: Yuchi Tribal Organization

Criterion (f) of the acknowledgment regulations provides, however, for an exception in which a petitioner may be acknowledged even though it is composed principally of members of a federally-recognized tribe. The intent of the administrative regulations is to deny the acknowledgment of “Splinter groups, political factions, communities or groups of any character that separate from the main body of a currently acknowledged tribe,” while providing that groups may be acknowledged even though they have been associated with an acknowledged tribe if they “can establish clearly that they have functioned throughout history until the present as an autonomous tribal entity” (25 CFR 83.3(d)). In order to benefit from the exception to criterion (f), a petitioner must demonstrate that it satisfies three conditions: that it has functioned throughout history as an autonomous tribal entity, that its members do not maintain a bilateral political relationship with the acknowledged tribe, and that its members have provided written confirmation of their membership in the petitioning group (25 CFR 83.7(f)). The Proposed Finding concluded that the YTO petitioner did not meet any of these three conditions, and thus did not qualify for the exception to the basic requirement of criterion (f).

The notice of the negative Proposed Finding on the YTO petition published in the Federal Register, and the reports prepared for the Proposed Finding, put the YTO petitioner on notice that it failed to meet criterion (f) because its membership consists principally of individuals who are enrolled members of a federally-recognized tribe, the MCN. The Federal Register notice and the Proposed Finding reports also put the YTO petitioner on notice that it failed to meet all three of the conditions required to be acknowledged as an exception to the essential requirement of criterion (f). Because the Department’s analysis clearly showed that the YTO petitioner did not meet criterion (f), it was not necessary for the Proposed Finding reports or the Federal Register notice to discuss the evidence relating to the other six criteria, or to conclude whether or not the petitioner met those criteria. A petitioner must meet all seven of the mandatory acknowledgment criteria specified in 25 CFR 83.7 to be acknowledged as an Indian tribe, so its failure to meet one criterion results in a finding against acknowledgment (25 CFR 83.10(m)).

The YTO petition for Federal acknowledgment was evaluated under 25 CFR 83.10(e), the section of the acknowledgment regulations which provides for an expedited finding on a single criterion when the documented petition and the petitioner’s response to the preliminary technical assistance review of the petition by the Bureau of Indian Affairs (BIA) indicates that there is little or no evidence that the petitioner can meet one of three specified criteria, in this case criterion (f). An evaluation of a single criterion for an expedited negative Proposed Finding occurs only after the petitioner has had the opportunity to respond to the technical assistance review of its petition materials (59 FR 9290). The YTO petitioner submitted additional materials in response to the BIA’s technical assistance review letter and requested that its petition be placed under “active consideration,” thus indicating that it considered its petition to be complete. An expedited evaluation of a petition on a single criterion, as in this case, occurs only after

### **Technical Report, Final Determination: Yuchi Tribal Organization**

the documented petition is complete and before the petition is placed under “active consideration” (25 CFR 83.10(e)).

#### Comments on the Proposed Finding:

After a Proposed Finding is issued, the acknowledgment regulations provide that the petitioner and members of the public may comment on the finding, and that their arguments and evidence will be considered in the preparation of the Final Determination (25 CFR 83.10(i)). The YTO petitioner and two individuals, Dorothy A. Matern of Turlock, California, and David K. Hackett of Knoxville, Tennessee, submitted comments on the Proposed Finding during the public comment period.<sup>2</sup> The regulations provide for two kinds of third parties. The comments of Matern and Hackett are considered to be the comments of “informed parties” rather than “interested parties” because they claimed no material interest in the case (25 CFR 83.1). Matern’s comments were submitted as letters dated January 5, May 16, October 21, and November 25, 1996. Her May 16 letter also contained excerpts from a research paper she had written. Hackett’s comments were submitted as letters dated April 20, July 29, and November 29, 1996. The YTO submitted a response to the Proposed Finding, dated November 29, 1996, which consisted of a 3-page cover letter, a 13-page statement, and 24 pages of documents. The petitioner replied to the public comments in letters dated April 29 and May 2, 1997.

The YTO’s response to the Proposed Finding does not directly respond to the conclusion that most YTO members are also MCN members, does not suggest that the percentage of MCN membership or the number of MCN members are wrong, and does not claim that the evidence of membership on which the calculation is based is erroneous. The YTO petitioner argues, however, that “we are a member of the said [Muscogee] nation,” as the result of the “forced assimilation” of the Yuchi as citizens of the Creek Nation (YTO 1996b, 7; 1997a, encl. [p.2]). Hackett contends that the Yuchi have chosen to participate in the only Indian political system available to them after the United States “arbitrarily” designated them as part of the Creek confederacy (Hackett 1996a, 2). Matern states that “some Yuchi people have aligned themselves with the Creek nation,” but asserts that “many more Yuchi do not” (Matern 1996a, 1). She does not identify such independent Yuchi, however, nor claim that they are members of the YTO. Thus, the petitioner and

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<sup>2</sup> The Department received one unsolicited comment from an informed party after the close of the public comment period on November 29, 1996. This comment was a letter, dated March 21, 1997, from Dorothy Matern. Pursuant to Section 83.10(i)(1), unsolicited comments submitted after the close of the response period “will not be considered in the preparation of a final determination.” This comment was forwarded to the Office of the Solicitor for retention and submission to the Interior Board of Indian Appeals in the event of an appeal, or to the Assistant Secretary - Indian Affairs in the event of a remand. The unsolicited comment was not considered for purposes of this Final Determination.

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commenters accept the finding that most YTO members are also MCN members, but argue that it should be disregarded because of historical considerations.

In its comments, the YTO argues that the Proposed Finding continues “the arbitrary misidentification of the Yuchi as a Creek People,” and asserts that “we are not Creek as claimed. . . .” (YTO 1996a, 2). Hackett also argues that the evidence does “not support the BIA’s determination that the Yuchi are a Creek People. . . .” (Hackett 1996b, 2). The Proposed Finding did not claim that the Yuchi are a Creek or Muscogee people, but discussed the YTO petitioner as part of a “Yuchi ethnic group” (AS-IA 1995, 11, 17). The Proposed Finding stated a factual conclusion that most YTO members are currently enrolled members of a federally-recognized tribe, the MCN. The YTO and Hackett contend that the MCN membership of YTO members stems from a historical misidentification of the Yuchi, or a misunderstanding of the Yuchi alliance with the Creek. Hackett argues that the Yuchi were designated by the Government as a part of the Creek Nation during their removal to Oklahoma in the 1830’s (Hackett 1996a, 2-3). The YTO argues that the Yuchi were arbitrarily labeled as Creeks by the Dawes Commission on its Dawes Roll of 1907 (YTO 1996b, 9-10).

This report does not evaluate the commenters’ historical arguments, and neither disputes nor confirms them, because the focus of criterion (f) is on whether or not the petitioner’s members are enrolled in a federally-recognized tribe at present. Although the definitions of “political influence” and “autonomous” in section 83.1 require those concepts to be understood in the context of the group’s history (see also the reference to historical situations in section 83.6(e)), in this case the historical considerations raised by the commenters do not impact the evaluation of the requirements of the conditions for an exception set forth in criterion 83.7(f). The crucial issue is not how the Yuchi historically became part of the Creek confederacy and how Yuchi individuals became eligible to be MCN members. The relevant historical consideration, which is discussed below, is whether the petitioning group historically maintained its autonomy as a group despite its members’ nominal membership in a federally-recognized tribe.

Matern objects to the Proposed Finding because she says that the finding was based on a “census” taken by the BIA, when it actually was based on a membership list created and submitted by the YTO.<sup>3</sup> Matern’s comments are directed toward the entire Yuchi ethnic group rather than to the YTO petitioner. She contends that BIA researchers evaluating the petition conducted an incomplete, “selective,” and “random census” of the Yuchi people (Matern 1996a, 2; 1996c, 2). A BIA researcher conducted a random survey of

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<sup>3</sup> The BIA only evaluates groups under 25 CFR 83 which themselves request to go through the acknowledgment process. The BIA bases its analysis of all the criteria for acknowledgment on the group defined by the membership list submitted by the petitioner. The BIA does not place individuals on or remove individuals from a petitioner’s membership list, which, as for recognized tribes, is under the control of the petitioner.

#### **Technical Report, Final Determination: Yuchi Tribal Organization**

individuals listed on the petitioner's membership list in order to interview some YTO members, but did not create a census of the ethnic Yuchi. Matern suggests that the Proposed Finding may be in error because individuals with parents of different ethnicity may have been counted on two tribal censuses (Matern 1996a, 2). The Proposed Finding, however, was not based on a classification or census of the Yuchi prepared by the BIA. Rather, the BIA's researcher compared the names on the membership list of the YTO to the names in the membership database of the MCN (AS-IA 1995, 12, 15). The YTO membership list was prepared by the YTO, not by the BIA. The MCN roll is maintained by the MCN, not by the BIA. Because individuals must apply to become MCN members, YTO members are also members of the MCN because of their own actions.

The YTO raises questions about the BIA's use of a series of reports prepared under the direction of Professor Morris Foster of the University of Oklahoma. These reports were submitted by Foster in support of the petition of the YTO at the request of another Yuchi organization, the E.U.C.H.E.E. The petitioner suggests that the reports "may contain false or inaccurate statements," without identifying any specific errors (YTO 1997a, encl.). Rather than objecting to specific examples of the BIA's use of this evidence, the petitioner asks how much weight was given to these reports in the Proposed Finding. The use of these reports in the Proposed Finding was indicated with specific source citations. The Foster reports were cited as evidence of the persistence of separate Yuchi ceremonial grounds and churches, which is supportive of the YTO petitioner's claims that the larger Yuchi ethnic group has maintained some characteristics of a distinct culture (AS-IA 1995, 18). The reports submitted by Foster focus on the entire Yuchi ethnic group, without specifically evaluating the YTO petitioner, as the Department must do. It was not necessary under criterion (f), however, for the Proposed Finding to evaluate whether or not the YTO petitioner has maintained a distinct culture or community. The Foster reports were not cited as a basis for concluding that the YTO failed to meet criterion (f). The YTO's remarks about the Foster reports provide no basis for changing any conclusion in the Proposed Finding.

The YTO and Matern charge that after the Proposed Finding, and after the petitioner had begun its research to prepare its reply, the BIA changed the issue which the petitioner would have to address. According to the YTO, it "first learned that the issue was now political instead of an historical factor" when it received a letter of September 23, 1996, from the Assistant Secretary (YTO 1996b, 12). This letter was a reply to a YTO request for an extension of the comment period in which YTO chairman Melvin George claimed that the extra time was necessary in order "to respond to the additional genealogical information requested by the Bureau of Indian Affairs. . . ." (George 1996). The Assistant Secretary noted that "the proposed finding did not question your genealogy" and that the BIA had not requested additional genealogical information after the Proposed Finding (AS-IA 1996). In its comments, the YTO asks, "if genealogical records were no longer necessary, why were we not notified so we could have been preparing our arguments on the political status of our Tribe?" (YTO 1996b, 1). The Proposed Finding

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itself provided that notice, and the Assistant Secretary's letter sought to clarify the matter by reminding the YTO to respond to the issues raised by the Proposed Finding on criterion (f).

Matern says that after the Proposed Finding the BIA took "a new position that it no longer considers racial, biological or genealogical information necessary or relevant to the Yuchi position" (Matern 1996c, 1). This claim appears to refer both to the Assistant Secretary's letter of September 23, 1996, and to a letter of July 1, 1996, from the BIA to Phyliss Bartram. On the issue of biology and race, Bartram had requested an explanation of the Proposed Finding in view of her belief in the "biological uniqueness" of the Yuchi and her suggestion that recognition be based on DNA testing (Bartram 1996). In reply, the BIA noted in its letter of July 1 that the Federal Government "recognizes political sovereignty rather than biological uniqueness" because the Federal relationship with Indian tribes is a government-to-government relationship rather than a racial relationship (BIA 1996). This was not a new position on the part of the BIA. On the issue of genealogy, the acknowledgment regulations, in criterion (e), require a petitioner to present genealogical evidence to demonstrate that its members descend from a historical Indian tribe, but the Proposed Finding on the YTO petition did not conclude that the petitioner failed to meet criterion (e). The BIA's letter to Bartram did not represent a change from the Proposed Finding, because "racial, biological or genealogical" information was not the basis for the Proposed Finding which evaluated evidence under criterion (f) alone.

The YTO and Matern object to the BIA having obtained information from sources other than the YTO and portray the BIA's research as biased. The YTO says that the BIA relied on a "biased and one-sided view from vested opponents" (YTO 1997b, 1). Matern says that BIA researchers used "unauthorized sources" and gathered material "from the MCN, not from the YTO" (Matern 1996c, 1, 2). She dismisses any evidence obtained from the MCN or its newspaper as "biased information" (Matern 1996c, 2). The BIA does not accept the position that some sources may be excluded from consideration, nor the assumption that information from the MCN is "biased." As part of every acknowledgment evaluation BIA researchers consult multiple sources when and where they are available. There is no source for obtaining MCN membership data other than the MCN. The MCN newspaper is a valid source for information on MCN politics. A BIA researcher visited the YTO and attended a YTO meeting. Because the YTO submitted a petition for Federal acknowledgment, it had the opportunity to state its case fully and to present all the evidence it desired. That evidence was considered by the Department. Under 25 CFR 83.10(a) and (1), the Assistant Secretary may initiate other research for any purpose relative to analyzing the documented petition and obtaining information about the petitioner's status. Pursuant to these provisions of the regulations, the BIA

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researchers supplemented the petitioner's documentation with research in other sources for both the Proposed Finding and this Final Determination.<sup>4</sup>

#### Evidence of Membership in a Federally-Recognized Tribe:

The YTO submitted as part of its petition a membership list which contained 165 names.<sup>5</sup> During the evaluation of the petition, the YTO petitioner submitted a second list of names of members which increased its claimed membership to 327. Independent scholars have estimated the current population of ethnic Yuchi at about 2,000 persons, while a 1956 list of the ethnic Yuchi created by S.W. Brown, Jr., in connection with Yuchi land claims included 1,299 names (AS-IA 1995, 18). One of the commenters states that the ethnic Yuchi consist of 1,320 people (Matern n.d., 4). These estimates refer to a group of Yuchi descendants which is several times larger than the petitioner, and which has not been evaluated for this Final Determination because it is not the petitioner.

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<sup>4</sup> Matern charges that a BIA researcher conducted research on the YTO under "false pretenses" because she declared that she was in Oklahoma on a personal "vacation" and an "unofficial" visit (Matern 1996c, 2). The YTO repeats this charge (YTO 1997a, encl.; 1997b, 2). Matern and the YTO claim that this statement was recorded, but they did not submit a tape recording or a transcript of it as evidence to be considered in preparation of the Final Determination. These allegations appear to be based on a simple misunderstanding of the BIA researcher's comments. The BIA researcher clearly identified herself as a researcher from the BIA who was evaluating the YTO petition. Her reference to a vacation referred to a single day on which she agreed to meet with the YTO (Saturday, December 31), and not to her entire field trip. Because the purpose of her research was to determine whether a Proposed Finding could be issued under the "expedited" provisions of the acknowledgment regulations, she was conducting an initial review of the petition under a single criterion and not the official field work which would have occurred had the petition been under "active consideration." Neither Matern nor the YTO have specified what data they believe were obtained by the alleged misrepresentation which otherwise would have been unavailable to the BIA researcher. They provide no valid reason to disregard this field data.

<sup>5</sup> The original, or 1991, membership list submitted by the YTO contained roll numbers 1-176. The YTO also submitted a genealogical chart for each individual on the list (YTO 1991). Although # 153 was missing from the list, this individual was identified by his genealogical chart. The list included 14 individuals who were designated as "associate" members. In addition, the YTO provided a genealogical chart for 6 individuals whose applications for membership were pending; 3 of those applications were designated as being for "associate" membership. Neither the "associate" members nor the applicants for "associate" membership were included in the analysis of MCN enrollment for the Proposed Finding. The individuals with pending applications for regular membership were included in that analysis. Therefore, the analysis in the Proposed Finding of the enrollment of YTO members in the MCN was based on the 176 individuals on the 1991 YTO membership list, minus the 14 "associate" members on the list, plus the 3 individuals with pending applications for regular membership, for a total of 165 YTO members.

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Because the second YTO membership list of 327 individuals did not include the identifying information on members -- date of birth, maiden name, and address -- required by the acknowledgment regulations (25 CFR 83.7(e)(2)), it was not used in the Proposed Finding (AS-IA 1995, 15). The lack of this identifying information made it impossible to determine whether similar names on the YTO list and the MCN roll referred to the same person or different persons. An acceptable conclusion on the percentage of individuals on the second, or 1995, YTO membership list who were enrolled in a federally-recognized tribe was therefore not possible at that time. The Proposed Finding reported that the research by the BIA had determined that 151 of the 165 individuals on the first, or 1991, YTO membership list, or 92 percent of them, are members of the MCN (AS-IA 1995, 16; BIA 1994). Neither the comments of the petitioner nor the public comments dispute the basic conclusion of the Proposed Finding that almost all of the YTO petitioner's members are also members of the MCN.

Five months after the deadline given to the YTO petitioner to submit additional membership data for the Proposed Finding, the YTO submitted genealogical charts for almost all of the new members on its second list. The YTO submitted its second list on January 30, 1995, and the genealogical charts for the new members on that list on June 30, 1995. Because the submission of that genealogical data was received after the Department had begun its deliberations on the Proposed Finding, that information was not considered for the Proposed Finding. It has been considered, however, for this Final Determination. The second list is a compilation of names only, and thus does not provide all the information required for membership lists by criterion (e) of the regulations (YTO 1995a). However, because the genealogical charts do supply a date of birth for YTO members, this additional information enables the BIA to use the second membership list because it makes it possible to determine whether individuals on the second YTO membership list are also on the MCN roll (YTO 1995b). Thus, this Final Determination is based on the second, or 1995, YTO membership list of 327 members (YTO 1995a).<sup>6</sup>

A check of the MCN citizenship database by the BIA has revealed that 278 of the 327 individuals on the 1995 YTO membership list, or 85 percent of them, are members of the MCN (BIA 1994, 1997).<sup>7</sup> The likelihood that a YTO member is dually enrolled in the

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<sup>6</sup> The second, or 1995, membership list submitted by the YTO contains roll numbers 1-327. The YTO also submitted a genealogical chart for almost all individuals on the list. The "associate" members on the original 1991 list are not included on the 1995 list. The individuals with "pending" applications for regular membership in 1991 are included as members on the 1995 list. Only one of the 165 regular members on the 1991 list is not included on the 1995 list. Therefore, the 1995 list consists of 164 original members plus 163 new members.

<sup>7</sup> This total of 278 MCN members does not include two YTO members counted as MCN members for the Proposed Finding. Although a YTO member (#102 on both the 1991 and 1995 lists), a minor, was identified by sources for the Proposed Finding as an enrolled MCN member, he has not been counted as a MCN member for the Final Determination because his MCN roll

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MCN, however, is related to his or her age. The adult members of the YTO, those born in 1977 or earlier and thus 18 or older in 1995, are more likely to be enrolled members of the MCN than are YTO minors. The expansion of YTO membership from 1991 to 1995 consisted disproportionately of adding minors to the list. Because YTO minors are less likely than YTO adults to belong to the MCN, adding minors to the YTO list had the effect of reducing the percentage of YTO members who are also members of the MCN. The pattern evident in the data suggests, however, that more of the minors will join the MCN as they age. The BIA's research reveals that 64 percent (9 of 14) of YTO members of unknown age, 71 percent (74 of 104) of YTO minors, and 93 percent (195 of 209) of YTO adults are MCN members.<sup>8</sup>

Conditions for an Exception:

Criterion (f) provides for an exception for a petitioner that is comprised principally of persons who are members of an acknowledged tribe if it can be shown that the enrollment of these individuals in the recognized tribe is merely nominal rather than substantive. The exception to the basic requirement of criterion (f) is tested by three conditions. To meet criterion (f), the YTO petitioner must demonstrate that, despite the inclusion of its members on the MCN roll, it meets all three of these conditions. Neither the comments of the petitioner nor the public comments attempt to demonstrate that the petitioner satisfies all three conditions necessary to qualify for an exception to the requirement of criterion (f).

The YTO and the commenters have not responded in any way to the **third condition** which requires that the petitioner's members must have provided "written confirmation of their membership in the petitioning group" (25 CFR 83.7(f)). The Proposed Finding concluded that only 6 of the 165 members on the first YTO membership list had provided an implied confirmation of their intention to be members of the petitioner's organization (AS-IA 1995, 32-33). Some of the genealogical charts submitted for individuals on the second list of YTO members contain the member's signature. These signatures are not explicit confirmation of an individual's willingness to belong to the petitioning group. Even if the signatures were considered to be such an explicit confirmation, they were

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number is not known. Another YTO member (#175 on the 1991 list and #160 on the 1995 list) has not been counted as a MCN member for the Final Determination because it was recognized in a review of the evidence that it was this individual's father of the same name (Sr.) rather than the individual himself (Jr.) whose MCN membership was verified for the Proposed Finding.

<sup>8</sup> The 1995 YTO membership list is annotated to indicate that five members are now deceased. No attempt has been made to determine whether other YTO members have died. If these five deceased members are excluded from the analysis of the 1995 YTO membership list, then 273 of 322 YTO members, still 85 percent of members, and 190 of 204 adults, still 93 percent of adults, are members of the MCN.



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provided by less than one-tenth of the 327 individuals on the second YTO membership list. Thus, a large majority of the petitioner's members have not provided written confirmation of their membership in the petitioning group.

The **second condition** requires that the petitioner's members "do not maintain a bilateral political relationship" with an acknowledged tribe (25 CFR 83.7(f)). On this condition, the Proposed Finding concluded both that individuals gave their consent to be on the MCN roll by applying for membership, and that a MCN Citizenship Board acted to accept individuals as members (AS-IA 1995, 9, 15). This reciprocal consent demonstrates that the political relationship between the MCN and its members, including those who also are on the YTO membership list, is a bilateral relationship under the regulations. The YTO and commenters Matern and Hackett have not disputed the conclusions of the Proposed Finding that to become a MCN member an individual must apply for membership and the MCN must approve the application. This Final Determination clarifies the Proposed Finding by noting that for the purposes of criterion (f) a bilateral political relationship with a federally-recognized tribe is presumed to exist when it can be demonstrated that reciprocal consent was involved in the process by which an individual came to be included on the tribal roll of a federally-recognized tribe. Because, as a recognized tribe, the MCN has a functioning political process, a presumption can be made that a member of the MCN participates in a bilateral political relationship with a recognized tribe.<sup>9</sup>

Although this presumption is rebuttable, in this case the presumption is confirmed because the evidence shows the actual participation of YTO members in MCN governmental activities. The Proposed Finding presented evidence that, since 1962, YTO members and other Yuchi individuals have participated in the MCN political process by holding office or positions in the MCN government, participating in MCN elections, and utilizing the MCN judicial system (AS-IA 1995, 8-9, 12, 16, 21-32). Neither the YTO nor the public commenters have disputed any of the specific examples of such participation presented in the Proposed Finding. The YTO notes that "some Yuchi

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<sup>9</sup> An analysis of the existence of a bilateral political relationship under criterion (f) poses a different question than it does under criterion (c). Criterion (f) asks about the relationship of individuals to a federally-recognized tribe, which, by definition, is a political entity. Criterion (c), however, asks about the relationship of individuals to a petitioning group, which must demonstrate that it is a political entity. When it is established that a political entity exists, as under criterion (f), it is consistent to assume that a bilateral political relationship exists when individuals consent to be on the tribal roll of the acknowledged tribe. Thus, the inquiry under criterion (f) is whether or not such consent exists. When it is not established that a political entity exists, as under criterion (c), there can be no presumption that bilateral political relations occur merely because a petitioning group has a membership list of individuals who have applied for membership. Thus, the inquiry under criterion (c) is whether or not a political entity exists, which requires an analysis of whether the group exercises political influence and authority over its members as well as whether such authority has existed continuously.

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individuals have been elected to the Creek Council,” but it claims that “our participation as individuals in the Creek” government “has been minimal. . . .” (YTO 1996a, 1-3). Matern says that “some Yuchi People did take [MCN] office in a small ratio” (Matern 1996c, 2). The Proposed Finding showed that the ethnic Yuchi have held MCN office in proportion to their population (AS-IA 1995, 27), and the YTO and Matern have provided no contrary evidence. This participation in MCN governance by YTO members since at least 1962 confirms the presumption, based on the reciprocal consent involved in being on the MCN tribal roll, that YTO members have had a bilateral political relationship with the MCN.

The primary argument advanced by the YTO and the commenters is that participation in MCN governmental affairs by Yuchi individuals does not constitute “official representation” of the Yuchi as a group (YTO 1996a, 1-2; 1997a, encl.; Hackett 1996c, 4; Matern 1996d, 1). The acknowledgment regulations, however, require an analysis of whether or not a petitioner’s individual “members” maintain a bilateral political relationship with an acknowledged tribe (25 CFR 83.7(f)). The Proposed Finding concluded that YTO members not only have given their consent to be MCN members, but also have participated in the political process of the MCN. The petitioner and the commenters have not provided evidence or arguments to rebut or alter that conclusion.

The **first condition** requires the petitioning group to have functioned “throughout history until the present” as an “autonomous” tribal entity (25 CFR 83.7(f)). The acknowledgment regulations define “autonomous” as “the exercise of political influence or authority independent of the control of any other Indian governing entity” (25 CFR 83.1). On this condition, the Proposed Finding noted that the leaders of the YTO explicitly stated that the YTO is not the governing body of a Yuchi tribe (AS-IA 1995, 11). Nor did the Proposed Finding locate any evidence that, prior to the formation of the YTO petitioner in 1989, its current members had “formed a distinct group within the greater Yuchi ethnic group” (AS-IA 1995, 9). The Proposed Finding also concluded that the Yuchi do not consider any of the MCN “chartered communities” in which they presently participate to represent a continuation of a historical Yuchi “tribal town” of the Creek Nation (AS-IA 1995, 26). This Final Determination clarifies the Proposed Finding, which merged the analysis of the first two conditions of criterion (f), by noting that for the purposes of the first condition the petitioner must demonstrate that the YTO as a group has been a politically autonomous entity.

The main focus of the comments of the YTO, Hackett, and Matern is an attempt to demonstrate that there was an autonomous Yuchi tribal entity in the past. The commentators’ discussion concerns the entire Yuchi ethnic group, without any specific examination of the substantially smaller YTO petitioner. For the most part, their claims that the ethnic Yuchi have been an autonomous group throughout history are treated as universally accepted and needing no demonstration (YTO 1996b, 10; Hackett 1996a, 1; Matern 1996a, 2). The commenters argue that scholarly experts have identified the

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existence of an aboriginal Yuchi people (YTO 1996a, 3; Hackett 1996a, 3; Matern 1996b, 1). The Proposed Finding, which referred to a “historical Yuchi tribe,” did not suggest otherwise (AS-IA 1995, 13). To the extent that these commenters cite specific examples of Yuchi political autonomy, they refer almost exclusively to the Yuchi at a time before their removal from the Southeast to Oklahoma in the 1830's (YTO 1996a, 3; 1996b, 3, 6, 8; 1997b, 1. Hackett 1996a, 2; 1996b, 1, 2; 1996c, 3). Because they have provided very little information about the post-removal period of the 19th century and almost no discussion of the 20th century, their historical recitation does not examine Yuchi autonomy throughout history until the present.

This report neither accepts nor rejects these arguments about the historical Yuchi ethnic group because this review evaluates the YTO petitioner, not the ethnic Yuchi. It is not necessary to evaluate whether or not the Yuchi ethnic group was historically part of the Creek Nation because neither the YTO nor the commenters have presented sufficient evidence that the YTO petitioner is an autonomous group in the modern era. The petitioner and the commenters have not demonstrated that the YTO petitioner currently exercises authority as a political entity autonomous of the MCN. Also, the extensive individual participation in MCN governance by YTO members since 1962 is consistent with a finding that the YTO organization has not been autonomous of MCN political control. Under the regulations, a demonstration of autonomy for a period of time in the past would not be sufficient by itself as a demonstration of autonomy throughout history. If the YTO petitioner is not an autonomous tribal entity in the modern era, under the regulations it has not been an autonomous tribal entity throughout history, which includes the recent past and the present.

The argument all three commenters advance is not that the Yuchi have maintained their political autonomy, but that they have maintained their “unique language, culture and religion” (YTO 1996a, 3; 1996b, ex.11. Hackett 1996a, 2; 1996b, 1. Matern 1996c, 3; n.d., 9). These are cultural attributes which the acknowledgment regulations do not require petitioners to have maintained, although such evidence may be used for criteria other than criterion (f). Under the acknowledgment regulations, each of the acknowledgment criteria is evaluated separately. This Final Determination on criterion (f) under the expedited provisions of the regulations does not evaluate whether or not arguments about Yuchi culture, language, or religion may be relevant to criteria other than criterion (f). Matern argues that the Yuchi have demonstrated autonomy because they have retained their “distinctive genetic material” (Matern 1996b, 2). The regulations do not require genetic distinctiveness. The YTO and the commenters present Yuchi cultural uniqueness or genetic uniqueness as a substitute for the regulatory requirement that the YTO petitioner be a politically autonomous entity. Because the acknowledgment regulations define “autonomous” as the independent exercise of “political influence or authority,” arguments about the uniqueness of Yuchi culture, language, religion, or genetics do not demonstrate that the YTO petitioner has been an autonomous tribal entity, as defined by the acknowledgment regulations.

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Summary:

The evidence reveals that the petitioner is composed principally of individuals who are members of a federally-recognized tribe. This report slightly amends the Proposed Finding by considering a second YTO membership list, and by concluding that 85 percent of the 327 YTO members on the second list, rather than 92 percent of the 165 members on the first list, are members of the federally-recognized MCN. The commenters have not demonstrated that the YTO petitioner is a politically autonomous entity at present, as required by the first condition, and the petitioner's leaders have stated that the YTO is not the governing body of a Yuchi tribe. The commenters have not challenged the conclusion of the Proposed Finding on the second condition that YTO members have maintained a bilateral political relationship with the MCN by applying for MCN membership and being accepted as members by the MCN. Also, the evidence indicates that individual YTO members have participated extensively in the MCN political and judicial systems since 1962, which confirms the existence of a bilateral political relationship between YTO members and a federally-recognized tribe. The commenters have not claimed that the YTO has met the third condition by providing written confirmations from its members of their intention to belong to the petitioning group.

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Source Materials

for the

Final Determination on the Petition for Federal Acknowledgment

of the

Yuchi Tribal Organization

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