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OK Tribes Reconstruction Treaty  
Select Provisions of the 1866 Reconstruction Treaties between the United States and Oklahoma Tribes

STATEMENT OF  
BRYAN NEWLAND  
ASSISTANT SECRETARY FOR INDIAN AFFAIRS  
UNITED STATES DEPARTMENT OF THE INTERIOR  
BEFORE THE UNITED STATES  
SENATE COMMITTEE ON INDIAN AFFAIRS

July 27, 2022

Aanii (Hello)! Good afternoon, Chairman Schatz, Vice Chairman Murkowski, and members of the Committee. My name is Bryan Newland, and I am the Assistant Secretary for Indian Affairs at the U.S. Department of the Interior (Department). Thank you for the opportunity to present the Department's testimony at this important oversight hearing on Select Provisions of the 1866 Reconstruction Treaties between the United States and Oklahoma Tribes. Several of these treaty provisions provided certain rights and privileges to people commonly referred to as Freedmen, or people who were enslaved by citizens of the Cherokee, Choctaw, Chickasaw, Muscogee (Creek), and Seminole nations, commonly referred to in federal statutes as the "Five Civilized Tribes" (Five Tribes) and later released from enslavement. The Department appreciates the opportunity to discuss these important provisions.

#### Background

The history of the Five Tribes is one "steeped in sorrow as a result of United States governmental policies that marginalized Native American Indians and removed them from their lands."<sup>1</sup> Each of the Five Tribes had citizens that enslaved people and enacted laws supporting enslavement and/or restricting the rights of enslaved people. Those laws are no longer in effect today. In 1866, following the Civil War, each of the Five Tribes entered into treaties with the United States containing provisions addressing the status and rights of freed slaves and persons of African descent residing among the Five Tribes.

It is important to understand that there is no single or uniform law or treaty that applies to all Freedmen. The Freedmen provisions in each of the 1866 treaties differed in important respects.

Treaty with the Seminole, March 21, 1866, 14 Stat. 755: Article 2 of the Seminole Nation of Oklahoma's 1866 Treaty provides that "inasmuch as there are among the Seminoles many persons of African descent and blood, . . . it is stipulated that hereafter these persons and their

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

Treaty with the Choctaw and Chickasaw, April 28, 1866, 14 Stat. 769: Under that treaty in Article 3, the Choctaw and Chickasaw Nations ceded certain lands in exchange for the sum of \$300,000, which the United States was to hold in trust until the Choctaw and Chickasaw Nations enacted “such laws, rules, and regulations as may be necessary to give all persons of African descent, resident in the said nation at the date of the treaty of Fort Smith, and their descendants, heretofore held in slavery among said nations, all the rights, privileges, and immunities, including the right of suffrage, of citizens of said nations.”

Treaty with the Creeks, June 14, 1866, 14 Stat. 785: Article 2 of the Muscogee (Creek) Nation’s 1866 Treaty provides that “inasmuch as there are among the Creeks many persons of African descent, . . . these persons . . . and their descendants . . . shall have and enjoy all the rights and privileges of native citizens, including an equal interest in the soil and national funds, and the laws of the said nation shall be equally binding upon and give equal protection to all such persons, and all others, of whatsoever race or color, who may be adopted as citizens or members of said tribe.”

Treaty with the Cherokee, July 19, 1866, 14 Stat. 799: Article 9 of the Cherokee Nation’s 1866 Treaty provides that “all Freedmen who have been liberated..., as well as all free colored persons who were in the country at the commencement of the rebellion..., and their descendants, shall have all the rights of native Cherokees.”

In 1896, Congress established a Commission to the Five Tribes to prepare membership rolls for each in anticipation of breaking-up and allotting their respective lands.<sup>2</sup> Congress directed the Commission to determine applications for citizenship in each of the Five Tribes in accordance with all their laws “not inconsistent with the laws of the United States, and all treaties with...said ...tribes,” and giving “due force and effect to the rolls, usages, and customs of each...”<sup>3</sup> It also required the Commission to “make a roll of freedmen entitled to citizenship in said tribes” and to “include their names in the lists of members...”<sup>4</sup> Once completed, the final rolls would remain with the Commissioner of Indian Affairs, by whom they were to be considered the “true and correct rolls of persons entitled to the rights of citizenship” in each Tribe.<sup>5</sup> These lists are commonly referred to as the “Dawes Rolls.”

In the past half-century, there have been disputes within some of the Five Tribes regarding the legal status of Freedmen.

The Cherokee Nation ultimately resolved its dispute over the status of Freedmen when in May 2021, Secretary Haaland approved a Cherokee Nation Constitution that explicitly secures the citizenship and political rights of Cherokee Freedmen. In a statement accompanying her approval of the Cherokee Constitution, Secretary Haaland stated that the new Constitution “fulfilled [the Cherokee Nation’s] obligations to the Cherokee Freedmen” and “encourage[d] other Tribes to take similar steps to meet their moral and legal obligations to the Freedmen.”<sup>6</sup>

With respect to the status of the Freedmen in the Choctaw, Chickasaw, Muscogee (Creek), and Seminole Nations, the Department recognizes there remain issues to be resolved and we look forward to working on those important issues with the Tribes.

### The Department of the Interior's Actions

In response to requests from representatives of Freedmen associations, the Department has considered whether certain Freedmen are eligible for some direct federal services. In February, I participated in consultation sessions with leaders of the Five Tribes to consider whether to admit certain Freedmen descendants as students at Haskell Indian Nations University (Haskell) and Southwestern Indian Polytechnic Institute (SIPI) - two colleges operated by the Bureau of Indian Education. We are continuing to review the feedback and comments received as a result of that consultation and have not made any decisions regarding potential enrollment of Freedmen at Haskell and SIPI.

One of the challenges the Department faces when considering direct federal services for Freedmen is determining eligibility. The Department of the Interior does not presently verify or determine who is a Freedman descendent. The Department generally defers to Tribes to determine who is and is not a tribal citizen. Tribes have the inherent and long-recognized authority to determine who qualifies as a tribal citizen; and, as sovereign parties to treaties, Tribes also have an important role in interpreting the meaning of those treaties. However, as Secretary Haaland stated in May 2021, the Department encourages Tribes to take steps to meet their moral and legal obligations to the Freedmen. The Department recognizes that there is more work and collaboration to be done with Tribes to get to that point.

### Conclusion

The Department is grateful to have the Five Tribes together today. We look forward to continuing our work with the Five Tribes and the Committee as the moral and legal obligations to the Freedmen are considered.

1 Cherokee Nation v. Nash, 267 F. Supp. 3d 86, 89 (D.D.C. 2017).

2 Act of June 10, 1896, ch. 398, 29 Stat. 321, 339-40.

3 Id. at 339.

4 Id. at 340.

5 Id. at 339.

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<https://doi.gov/pressreleases/secretary-haaland-approves-new-constitution-choctaw-nation-guaranteeing-full>.

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