



**Congress of the United States
House of Representatives**

April 30, 2009

The Honorable Eric Holder
Attorney General
Department of Justice Building
950 Pennsylvania Ave., NW
Washington, D.C. 20530

Dear Mr. Attorney General:

Over forty years after enactment of the landmark Civil Rights and Voting Rights Acts, there is a place in the United States that African Americans cannot vote or receive federal benefits as a matter of law. The victims of this racial oppression are known as freedmen, who are descendants of African slaves owned by Indians. They are called freedmen, but they are anything but free.

Freedmen are guaranteed full and equal citizenship in a small number of Indian Tribes pursuant to treaties signed with the United States Government following the Civil War. Despite over 100 years of litigation and federal laws reaffirming and protecting the rights of freedmen, today's tribal leaders of the Cherokee, Seminole, Choctaw, Chickasaw, and Creek Nations of Oklahoma (The Five Civilized Tribes) have chosen to ignore their longstanding treaty obligations by removing freedmen from tribal citizenship rolls or relegating them to second-class status within the tribe.

We the undersigned members of Congress request that the Department of Justice Civil Rights Division commence a full-scale investigation into what we believe are the Five Tribes' systematic expulsion of its freedmen citizens in violation of their treaty, voting, and civil rights. The illegal actions of the leadership of the Five Tribes, some of which are the wealthiest tribes in Indian Country, have resulted in the freedmen's inability to access federal benefits and programs, totaling in the hundred of millions of dollars annually, in the areas of housing, education, health, and public works. In many instances, the illegal expulsions of the freedmen occurred decades ago.

Treaties and Case Law

Tribal leaders justify their right to expel the freedmen on the grounds of tribal sovereignty. But a number of laws and treaties that require the United States Government's involvement on behalf of the freedmen uniquely distinguish their citizenship status:

1. **The Five Civilized Tribes' Treaties of 1866** provide equal rights of tribal citizenship to descendants of former slaves and guarantee their right to run for office.

The Cherokee treaty provides that "...all freedmen who have been liberated by voluntary act of their former owners or by law, as well as all free colored persons who were in the country at the commencement of the rebellion, and are now residents therein, or who may return within six months, and their descendants, shall have all the rights of native Cherokees (Article 9); and "should any such law, either in its provisions or in the manner of its enforcement, in the opinion of the President of the United States, operate unjustly or injuriously in said district, he is hereby authorized and empowered to correct such evil..." (Article 6)

The Creek treaty provides that its former slaves 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..." (Article 2)

The Seminole treaty provides that its former slaves "shall have and enjoy all the rights of native citizens, and 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. (Article 2)

1. **The 13th Amendment** prohibits slavery and badges and incidents of slavery. The D.C. Court of Appeals has upheld in *Vann v. Kempthorne*, that recent efforts by the Cherokee Nation of Oklahoma to disenfranchise its freedmen represent "a badge or incident of slavery," a clear violation of the 13th Amendment.
3. **The 1970 Principal Chiefs Act** requires the Secretary of Interior to approve the voting procedures of the Five Civilized Tribes. In 2002, the United States Government severed its relations with the Seminole Nation after it refused to allow the Freedmen to vote in tribal elections in violation of the Principal Chiefs Act. The Cherokee Nation voted in March 2007 to remove its freedmen. That election has never been approved by the Department of Interior.

The United States Government's refusal to uphold its fiduciary responsibility to protect the Cherokee Freedmen, whose citizenship rights were removed in a March 2006 vote, contradicts actions taken in 2000 by the Bureau of Indian Affairs (BIA) in response to the Seminole Nation's expulsion of its freedmen citizens. The Clinton administration's Assistant Secretary of the BIA, Kevin Gover, responded by suspending the United States

Government's relations with the Seminole Nation, including withholding all federal funds and shuttering the Nation's gaming operations, until all freedmen had been reinstated in the tribe.

The BIA's action led to two lawsuits, *Seminole Nation v. Norton I an II*, that were won by the United States Government.

Norton I held that the Treaty of 1866 is in full force and effect and had not been abrogated by acts of Congress, dispelling the Seminole Nation's argument that it was not bound by the treaty to guarantee the freedmen's rights to citizenship and the vote.

Norton II affirmed the Department of Interior's decision to disallow recognition of the election of the Seminole Nation's Principal Chief in which freedmen were not allowed to vote. The decision held that the tribe had a duty to protect the rights of the freedmen and, if they did not, that the United States Government was obligated to uphold their rights.

In the same year as *Norton II* (2002), the Cherokee Nation petitioned the Bureau of Indian Affairs (BIA) to remove U.S. oversight of its electoral process through a constitutional amendment. The BIA responded that it would suspend oversight on three conditions: (1) the freedmen must be able to vote; (2) the freedmen cannot be terminated; and (3) the 1970 Principal Chiefs Act that requires United States Government approval of tribal voting procedures remains in effect. In 2007, the Cherokee Nation removed its freedmen from the tribe in violation of the BIA's previously issued guidelines.

Unfinished Business

Forty-four years after the Selma marches, there is still unfinished business, a fact that you eloquently noted at this year's commemoration of Bloody Sunday with the following words:

“Some take the view that the civil rights movement has been an unbroken march forward. But the men and women of Bloody Sunday know better. Some take the view that when it comes to civil rights, we have already reached the Promised Land. But we know better. And some take the view that justice and equality have been achieved for all Americans. But I know better.”

Today freedmen continue to endure a legacy of discrimination that African Americans in the South withstood decades ago and many have now overcome, a life where the tyranny of governance based on the doctrine of states' rights determined their unequal access to quality schooling, health care, housing, jobs, and the vote. They bear witness to Dr. Martin Luther King's words penned in a Birmingham jail cell that “injustice anywhere is a threat to justice everywhere.”

Today the Seminole Nation does not permit its freedmen access to federal tribal benefits but, in a cruel ironic twist, allows them to vote and hold office.

Today the Cherokee Nation refuses to process any new freedmen citizenship applications and severely limits freedmen's access to federal tribal benefits and the tribe's gaming proceeds. It seeks to rid the nation of people like Bernice Riggs -- a descendant of humorist Will Rogers, a Cherokee citizen, and Clem Vann Rogers, a noted Cherokee leader—who suffers from Alzheimer's in a nursing home unsupported by Indian Health Services medical benefits.

Today Creek freedmen are no longer citizens after the Creek Nation removed them from its citizenship rolls in 1979, even barring freedmen from the polls, when the nation voted to reorganize under the Oklahoma Indian Welfare Act of 1936. Allen Mitchell -- a retired sheriff, minister, and Creek freedmen -- was illegally prohibited from registering to vote in the election. Despite serious voting irregularities, the Department of Interior approved the new Creek constitution.

Today the Choctaw Nation does not recognize its freedmen citizens due to the fact that over two decades ago, in 1983, the Nation denied freedmen the right to vote for a new tribal constitution that included a provision to remove freedmen from the nation. The Department of Interior approved the constitution.

Today we believe the U.S. Government has a moral obligation to investigate whether or not Chickasaw freedmen's rights have been upheld in accordance with the 1866 treaty.

Action

More than 100,000 persons of African descent, whose ancestors were forced to toil without pay for hundreds of years, marched the Trail of Tears in shackles, and bear a large responsibility for the wealth of the five tribes, languish without full and equal access to educational, housing, and health service benefits and without sharing in the largesse of the tribes' newfound casino wealth.

We can no longer allow those who oppose upholding the freedmen's civil and voting rights to claim that this is a tribal sovereignty issue that rests solely within the domain of the tribal courts and tribal law. As previously noted, there are numerous treaties the Five Civilized Tribes signed with the United States Government following the Civil War that guarantee the civil and voting rights of freedmen. Those rights have been abrogated repeatedly by these tribes and the only recourse for the freedmen at this juncture is the federal courts and the U.S. Government.

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The Department of Justice has the legal and moral responsibility to investigate what we believe are violations of the freedmen's civil and voting rights. We can no longer afford to sit back and allow BIA officials, some of whom are major architects of the freedmen's civil and voting rights violations, to set policy that runs counter to the United States Government's legal obligations to the freedmen.


In closing, it is our firm belief that Department of Justice Civil Rights Division must be charged by you to investigate all efforts past and present to disenfranchise the freedmen and that any investigation it undertakes must not be short-circuited by forces that seek to use tribal sovereignty as a justification for inaction. We believe that tribal efforts to disenfranchise the freedmen transcend the scope of tribal courts and law and that incidents of tribal packing of courts to disenfranchise the freedmen and violations of the Principal Chiefs Act warrant federal investigation and possible intervention (see *Colliflower v. Garland*).


We seek your prompt attention to this matter and await your earliest response.


Sincerely,



Diane E. Watson
Member of Congress


John Conyers, Jr.
Member of Congress


Barney Frank
Member of Congress


Barbara Lee
Member of Congress


John Lewis
Member of Congress


Sheila Jackson Lee
Member of Congress