

**Testimony of Chairwoman Ann Denson Tucker
On Behalf of the Muscogee Nation of Florida
Before the Committee on Indian Affairs
United States Senate**

*Hearing: On the process of federal recognition of Indian Tribes
September 19, 2007*

I. Introduction

Chairman Dorgan, honorable Committee Members, my name is Ann Denson Tucker. I am Chairwoman of the Muscogee Nation of Florida, the Florida Tribe of Eastern Creek Indians. I am honored to be here representing my Tribe and my people to testify about my Tribe's experience with the federal recognition process.

My Tribe needs and deserves federal recognition, and we appreciate this Committee's interest in reviewing the flaws in the Bureau of Indian Affairs' ("BIA") current recognition procedures.

My Tribe is not just another victim of the recognition bureaucracy – Petitioner Number 32 in the Office of Federal Acknowledgement - we are also the second oldest. We have been trapped in the BIA recognition system since the mid-70's. After filing multiple Petitions and surviving a number of rule changes over 25 years, we were finally classified as "Ready, Waiting for Active Consideration." That was 4 years ago. We are still on the list, without any indication of when the BIA will act on our Petition. All told, we have been trapped in BIA's bureaucracy for over 30 years and we have nothing but expense and frustration to show for it.

My Tribe has exhausted its resources. It can no longer pursue or respond to the BIA's failed process – a process that requires applicants to re-do and re-file papers and studies and to comply with rules, regulations, and interpretations that did not exist when our initial application was made – a process whose pace can be characterized, at best, as glacial or, perhaps, as no pace at all. My Tribe has worked, waited, struggled, and sacrificed in this process for over 30 years. At every turn, we have learned that the BIA tribal recognition process is enormously burdensome, confusing and unfair. The recognition process represents a clear failure of the federal government's trust responsibility to Indian Tribes and should be addressed by Congress.

II. Background on the Muscogee Nation of Florida

The Muscogee Nation of Florida, also known as the Florida Tribe of Eastern Creek Indians, is a Tribe of Creek Indian people whose home is centered in Bruce, in Walton County, Florida. Our ancestors were one of the Tribes that made up the Historic Creek Confederacy, and were signatories to the 11 treaties with the United States between 1790 and 1833 that led to the Creeks forced removal from their traditional homelands. In response to attempts to remove our community, our ancestral tribal leaders left their Indian enclave in Daleville, Alabama and followed the Choctawhatchee River south to Bruce Creek, where they re-established our community, traditions and homes. Since that time, --150 years ago--my Tribe has lived, fished, hunted, farmed cooperatively, raised cattle,

and practiced our traditional ceremonies on this land as a community and as a distinct cultural, social and political unit.

By the time we migrated from Daleville to Bruce, *Jim Crow* laws had been enacted in Florida. By 1850 it was illegal to trade with Indians. And in 1852, it became illegal -- under penalty of death -- for Indians to be "Indian," unless the Indian was confined to a Reservation. Under the general outlawing of Indians, people could be white or "colored," but could not be openly Indian. Because my Tribe had no formal reservation, the *Jim Crow* laws made it nearly impossible for us to openly embrace our cultural heritage and community. We survived until the *Jim Crow* laws were repealed only by cooperatively maintaining our communal anonymity. Allow me to repeat this, for nearly 100 years our Tribe was forced to hide its government, traditional ceremonies, and culture. As a result, under the best of circumstances, satisfying BIA's tribal recognition requirements became difficult. The fact that BIA continuously changes its tribal recognition requirements, and ignores the impact of the *Jim Crow* laws, has made the task almost impossible.

Most of my Tribe's members continue to live in and around Bruce, just as our ancestors did after migrating from Alabama. We have lived together, worked together, married one another, and buried one another as a community. We have our own rules and we have our own leaders. We have kept our ways and our ceremonies. We even built our own school in which our people teach our children about our traditions.

III. The Muscogee Nation of Florida's Experience with the Recognition Process

My Tribe's experience with BIA's recognition process is not unique. Let me tell you our story.

It has been 60 years since our community leader – my great grandfather - wrote to the BIA and explained that our people deserved compensation for lands taken under the Treaty of Ft. Jackson. BIA's response, which is on file in the Federal Archives, was dismissive, declaring curtly, "You are mistaken. You cannot possibly be who you say you are because the members of that Tribe are either dead or removed..." Fast forward 10 years to 1957 (the same year the Seminole Tribe of Florida was granted federal recognition), when the BIA finally acknowledged that it had not rid the Southeast of the Florida Tribe of Eastern Creek Indians; the same year the Seminole Tribe of Florida was granted federal recognition. Fast forward again 14 years, to 1971, when BIA finally verified our racial identification to the U. S. Government and, in turn, to the State of Florida. By then, my great grandfather had been dead for 2 years, and we had already spent 24 years getting the BIA to acknowledge our existence as Indians. Now, 36 years later, I am here to tell you that our Indian community and tribal government are still waiting for the BIA to acknowledge that we are a Tribe, and, with no end to the regulatory process in sight, we need Congress to intervene.¹

¹ The following is a brief summary of my Tribe's efforts to achieve recognition through the administrative process:

- 1978—The Tribe submits an initial petition for recognition. The petition is returned later that year purportedly because of changes to BIA regulations.

Because we are one of the oldest Tribes still seeking federal recognition, having sought recognition before there even was a formal process, and because we have ridden the tail of the regulatory tiger as it has run haphazardly through change after change, we can offer the following specific examples of some of the problems that have crippled the BIA tribal recognition process:

The lack of an accountable standard of interpretation. - Staff members' interpretations are inconsistent; and when inconsistencies arise, staff is not accountable.² Additionally, in making its findings and final determinations, BIA does not apply the standards set forth in BIA's own regulations, electing, instead to cite to standards for review and have been developed by academics. Rather than observing the intent and letter of applicable federal regulations, BIA's

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- 1978-1995—The Tribe prepared three separate petitions for recognition. The first two petitions were not submitted because of continuing changes to agency regulations and policies. The third was submitted to BIA in June, 1995.
 - 1996—The Tribe received a "Technical Assistance" letter from BIA requiring additional research and document preparation. The Tribe submitted its response in 2002.
 - 2003—The Tribe was placed on the "Ready, Waiting for Active Consideration" list. At the same time, the Tribe was notified that because of additional changes to agency regulations the Tribe needed to electronically submit in excess of 840,000 pages of documents.

² The Acknowledgment Precedent Manual offered as a guide has a qualifying statement that its contents do not serve to constraint the staff or any decisions made.

process has become an *ad hoc* jumble of regulatory interpretation in which federal regulations are ignored.³

- *Undue influence by “parties of interest” before a factual determination is made.* OFA no longer defers comments by parties opposing acknowledgment petitions until OFA has made its factual determination based on the evidence submitted by the Tribe. Protesters now are free to oppose petitions and wage public relations campaigns even before BIA has fully considered the Tribe's petition. These activities make it impossible for the process to be a fair, factually-based evaluation.
- *OFA's unwillingness to provide documentation that it possesses.* The sheer magnitude of the BIA's requirements regarding the format, size and amount of documentation are not justifiable and cause the cost of preparing a filing a petition for acknowledgment prohibitive. To make matters worse, if evidence of conditions precedent to recognition is not available to the tribal petitioner but is in OFA's possession, OFA will reject a Tribe's petition for lack of evidence rather than supplementing the Tribe's petition with evidence OFA has in its files.⁴

Please allow me to identify one final, overarching problem that has impacted us dramatically: *the ever shifting goal line.*

³ Final Determinations and other formal findings from OFA cite historical, anthropological and genealogical standards. The only standards of these type are academic communities, not the regulations.

In 1978, when my Tribe filed its first petition for acknowledgment, Tribes were not required to do multiple filings. However my Tribe has been required to continually file new papers to address changes in BIA's regulations, changes in BIA's "internal operating procedures" of the BIA and changes in BIA's own interpretations of evidence in support of our petition that we previously submitted to it.

My Tribe has expended untold human and financial resources trying to satisfy the BIA. We have been forced by the process to retain attorneys, historians, genealogists, archaeologists and other experts to satisfy the BIA's requirements and new legal precedents. And we have done it all over again when the BIA's requirements changed. After each attempt we have been met with new demands and no substantive action. After more than 30 years of trying to satisfy changing BIA demands of our initial Petition approaches, it is clear that the BIA's process is patently defective and terminally inefficient.

II. The Importance of Fair and Efficient Federal Recognition Regulations

The BIA's rules and procedures cause it to withhold recognition from Tribes who have made proper application for, and who are entitled to, recognition. The BIA's intransigence threatens the survival of Tribes and the well-being of Tribal members. I understand that this hearing is not being held to hear my Tribe's argument for federal recognition. However, understanding the importance of federal recognition makes it easier to see that my Tribe's frustrations with BIA are neither unique nor inconsequential.

Federal recognition acknowledges the significance of tribal governments and the U.S. government's responsibility to Tribes. It also opens opportunities to Tribes under various federal programs reserved for federally recognized Tribes, facilitates economic development and enables Tribes to qualify for federal funding. As Congress has stated:

"Recognized" is more than a simple adjective; it is a legal term of art. It means that the government acknowledges as a matter of law that a particular Native American group is a Tribe by conferring specific legal status on that group...This federal recognition is no minor step. A formal political act, it permanently establishes a government-to-government relationship between the United States and the recognized Tribe as a "domestic dependent nation," and imposes on the government a fiduciary trust relationship to the Tribe and its members. Concomitantly, it institutionalizes the Tribe's quasi-sovereign status, along with all the powers accompanying that status such as the power to tax, and to establish a separate judiciary. Finally, it imposes on the Secretary of the Interior specific obligations to provide a panoply of benefits and services to the Tribe and its members. In other words, unequivocal federal recognition of tribal status is prerequisite to receiving the services provided by the BIA and establishes tribal status for all federal purposes.⁴

The Department of the Interior's website boasts that "[t]he scope of Indian Affairs programs is extensive and includes a range of services comparable to the programs of state and local government, e.g., education, social services, law enforcement, courts, real estate services, agriculture and range management, and resource protection."⁵ None of these services and benefits is available to my Tribe so long as it is trapped in the BIA's recognition process.

The importance of federal recognition cannot be overstated. Tribes have endured forced relocation, aggressive and open government discrimination, and years of neglect by government bureaucrats. In spite of these trials, Tribes have

⁴ H.R. Rep. 103-7811 103rd Cong., 2nd Sess. (1994) at 2; 1994 U.S.C.C.A.N. 3768, 3769.

⁵ Available at: <http://www.doi.gov/benefits.html>

worked, and continue to work diligently to address pressing economic, education, and resource issues. We should be able to avail ourselves of programs intended to support our efforts. We should not be thwarted by the ineptitude and further neglect of the BIA.

III. Conclusion

Congress must take action to reform the tribal recognition process. Put simply, it is unreasonable for the BIA to have a regulatory review process that takes decades to complete, requires Tribes to pay exorbitant sums for attorneys, historians, genealogists, archaeologists and other experts and relies on a body of regulations that constantly change, making compliance nearly impossible.

Applicants should not be made to wait decades for fair BIA action. Federal recognition is not only about self-determination. It is about our very survival as a community of Indian people. My Tribe has the same desperate needs that it had 35 years ago: housing, health care, education, elderly services and emergency management. These needs – critical to the survival of our Tribe's members -- have been compounded by the passage of time and the BIA's neglect.

As each year passes my Tribe struggles to care for its members needs as it becomes more and more difficult to imagine when we will receive the federal recognition to which we are entitled. The tribal leaders who began the recognition process in their youth are now tribal elders. Our elders, like my mother, deserve to be recognized before they pass leaving the burden of engaging the BIA bureaucracy to the next tribal generation.

I appreciate the invitation to speak to you today on behalf of the Muscogee Nation of Florida. My Tribe hopes that Congress will take action to ensure that federal recognition process is reformed and streamlined in ways that produce timely, fair, and predictable responses to petitions for recognition.

Thank you.