The Great Seminole Nation of Oklahoma

Testimony of Chief Lewis Johnson and Assistant Chief Brian Palmer

SENATE COMMITTEE ON INDIAN AFFAIRS

July 27, 2022

Written Testimony Regarding the History of the Freedmen Population of the Seminole Nation

Introduction

Chairman Shatz, Vice Chair Murkowski, and members of the Committee: we are Chief Lewis Johnson and Assistant Chief Brian Palmer of the Seminole Nation of Oklahoma. We are here to provide the history of the Freedman Citizens of the Seminole Nation in the context of the Seminole Nation's history and our 1866 Treaty with the United States.

The Seminole Nation of Oklahoma (Seminole Nation) is made up of the Seminole Indian People and Freedmen citizens descended from the Seminole Citizens and Members whose names appear on the final rolls of the Seminole Nation of Oklahoma (the Final Seminole Dawes Rolls), as approved by the United States Congress pursuant to the Act of April 26, 1906 (34 Stat. 137). The Seminole Nation is a sovereign nation whose membership is based solely on ancestry, not race, revolving around Band membership. As established by the Supreme Court in *Morton v. Mancari*, 417 U.S. 535, 552-553 (1974), membership is well established as a political classification, and not a racial classification. In fact, many people that may be Native American racially are excluded from membership. This follows the same logic that membership is not, and cannot, be based upon DNA tests or claims of Native American heritage. The Seminole Nation, exercising its sovereign authority, has established its citizenship and membership requirements based upon lineal ancestry, very similar to a child's eligibility for United States citizenship through a parent's citizenship.

The Seminole Nation Government and Bands

Many people do not understand the governmental structure of the Seminole Nation. Similar to the United States Government, the Seminole Nation has three branches of government created under the Constitution of the Seminole Nation, as amended (Seminole Constitution): (1) Legislative – the General Council of the Seminole Nation (General Council); (2) Executive – the Chief and the Assistant Chief; and (3) Judicial – the Seminole Nation Supreme Court. The Chief, Assistant Chief, and members of the General Council are elected pursuant to the requirements of the Seminole Constitution. But unlike the United States government and most state governments, the General Council is made up of two (2) representatives from each Band within the Seminole Nation, and not based on any geographic locations within the Seminole Nation Reservation. This

structure of the General Council, as the supreme governing body of the Seminole Nation, emphasizes the importance of Band membership with the Seminole Nation.

The Seminole Nation is currently composed of fourteen (14) Bands. Twelve (12) of which are comprised of Seminole Indians who share a similar language and culture. Two (2) of the Bands are Freedmen Bands. The fourteen (14) Seminole Bands are the backbone of Seminole Society. Originally, each of Seminole Indian Band was a separate Tribe, but the Seminole Bands eventually joined together to form the Seminole Nation in the late 1700's and early 1800's. Through time, the number of Bands has been steadily reduced, as some Bands died out or joined with other related Bands. In the 1830's in Florida, there may have been as many as 35 Bands, in 1860 there were 24, and by 1879 there were only 14 Bands - the current number recognized in the Seminole Constitution.

In 1866, the Dosar Barkus and Caesar Bruner Bands were recognized as two (2) of the fourteen (14) currently assembled Bands. These two Bands are comprised of Seminole Citizens of African descent who had been forcibly removed from Florida with the other Seminole People. Each Band has two (2) Band representatives that are members of the General Council of the Seminole Nation.

Like many Native American cultures, the Seminole Nation is a matrilineal society. Band membership is traditionally determined by ancestry, and a Seminole child is generally enrolled into the Band of their mother. Band membership is not racial, as there are numerous Seminole People who are ethnically diverse, including Members with African, European, Hispanic, Asian, and Native American ethnicity enrolled as Members of various Seminole Bands. The only requirement, as provided in Article II of the Seminole Constitution, is evidence of ancestry traced to a Seminole citizen appearing on the Final Seminole Dawes Rolls.

History of The Seminole Freedmen and Removal

Prior to removal from Florida, most of the people of African ancestry living among the Seminole were not slaves. They were free Africans and escaped slaves, who allied with Seminole living in Spanish Florida. When the Seminole People were forcibly removed by federal troops from their homeland in Florida, most of the population of African ancestry living among the Seminole People were also forcibly removed to Indian Territory later known as Oklahoma.

Following their relocation to Indian Territory later known as Oklahoma, the various Seminole Bands were collectively recognized by the United States Government first as the Seminole Nation and later as the Seminole Nation of Oklahoma and were subsequently grouped with other southeastern Tribes that had been forcibly removed to Indian Territory later known as Oklahoma. These southeastern Tribes, collectively referred to as the Five Tribes (formerly known as The Five Civilized Tribes) include the Seminole Nation of Oklahoma, The Cherokee Nation of Oklahoma, The Choctaw Nation of Oklahoma, The Chickasaw Nation of Oklahoma, and the Muscogee (Creek) Nation of Oklahoma.

Before removal, some of the Five Tribes held enslaved African people. It must be understood not all five tribes had similar practices of chattel slavery. Unfortunately, these Tribes

were following the horrific and barbaric practices utilized by the European based culture of the colonists that had come to dominate the Southern region of the United States. During the forced removal of the Five Tribes to Indian Territory later known as Oklahoma, many of the enslaved African people were forced by federal troops to accompany the Native Americans being removed, resulting in their relocation to Indian Territory tribal reservations. Following emancipation from slavery, those African people living among the Five Tribes were generally referred to as Freedmen.

In 1866, each of the Five Tribes signed treaties with the United States Government that ended the practice of slavery and involuntary servitude within the reservations of the Five Tribes and guaranteed equal protection for the Freedmen peoples that lived among the existing members of the Five Tribes. Article II of the 1866 Treaty with The Seminole (1866 Treaty) provides that the people of African descent living among the Seminole (Seminole Freedmen) who settled there (Seminole Nation) were guaranteed civil rights and equal protections as the citizens of the Tribe by stating that:

> [I]nasmuch as there are among the Seminoles many persons of African descent and blood, who have no interest or property in the soil, and no recognized civil rights, its stipulated that hereafter these persons and their descendants, and such other of the same race as shall be permitted by said nation to settle there, shall have and enjoy all the rights of native 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.

Seminole Nation Treaty of 1866, Article II.

Pursuant to the Seminole Constitution, Seminole Freedmen are Seminole Citizens of the Seminole Nation guaranteed the same civil rights and equal protections of the governing laws of the Seminole Nation, including representation on the General Council (the legislative body of the Seminole Nation). Seminole Freedmen are Citizens of the Seminole Nation but are not classified as "Members" for historical reasons set forth herein. The historical distinction of Seminole Freedmen begins within the 1866 Treaty, when Seminole Freedmen were established as Citizens of the Seminole Nation. This distinction was further perpetuated by the Act of Congress approved March 3, 1893, establishing the Dawes Commission. The Dawes Commission categorized the Seminole Freedmen separately as it allotted lands and assets of the Seminole Nation. The United States agents of the Dawes Commission kept separate rolls for Seminole Freedmen and made separate allotments for Seminole Freedmen. Regardless of their separate categorization by the United States Government, the Freedmen are, as the 1866 Treaty states, Citizens of the Seminole Nation.

The 1866 Treaty further stipulates that the Seminole Nation is subject to the power of Congress and the President so long as those exercises of power do not interfere with the Tribe's sovereign power and status. In Article VII, the Seminole Nation "agree[d] to such legislation as Congress and the President may deem necessary for the better administration of the rights of person and property within the Indian Territory." Seminole Nation Treaty of 1866, Article VII. The terms of the 1866 Treaty made it clear that "said legislation shall not in any manner interfere with or annul their present Tribal organization, rights, laws, privileges, and customs." *Id*. When the 1866

Treaty was signed, the intent was to minimize the negative impact on the right of the Seminole Nation to govern itself. Both the United States and the Seminole Nation saw the importance of the Seminole Nation's General Council making its own laws before and after the Treaty was signed. This intent demonstrated by the 1866 Treaty language stating that "[n]o law shall be enacted inconsistent with the Constitution of the United States, or the laws of Congress, or **existing treaty stipulations with the United States**; nor shall said council legislate upon matters pertaining to the organization, **laws or customs** of the several tribes except as herein provided for." *Id.* (emphasis added).

Congress has Plenary Power Over Indian Tribes

Plenary power over Indian affairs allows Congress to "enact legislation that both restricts and, in turn, relaxes those restrictions on Tribal sovereign authority." *Cohen's Handbook of Federal Indian Law* § 5.02 (Nell Jessup Newton ed., 2017). The United States Supreme Court has held that "[p]lenary authority over the Tribal relations of the Indians has been exercised by Congress from the beginning." *Lone Wolf v. Hitchcock*, 18 U.S. 553, 565 (1903). Congress controls Indian affairs, and this power is "solely within the domain of the legislative authority." *Id.* at 567. The Treaties that Congress creates and the laws that it makes regarding Indian Tribes must be followed by all parties to the treaty. The Seminole Nation understands this to be true today and knows that, as a sovereign tribe, it is free to determine membership and citizenship so long as that decision is made in accordance with the plenary power of Congress, including the 1866 Treaty. Thus, the Seminole Nation is at liberty to continue to exercise its power to decide who is a citizen of Seminole Nation so long as these legislative decisions coincide with treaty obligations. This includes allowing the Freedmen population to become "Citizens" of the Nation without compromising any future ability to be sovereign and govern itself. Native American Tribes have always had the authority to determine their own membership because "Native American Tribes retain their sovereignty unless and until Congress ordains otherwise." *Oklahoma v. Castro-Huerta*, No. 21-429, 2022 LEXIS 3222, at *39 (U.S. June 29, 2022).

Inherent Sovereignty and the Right to Regulate its Membership

The United States of America has four routes available to become a citizen, which include: citizenship by naturalization, citizenship by marriage, citizenship of children as a result of their parents' citizenship, and citizenship through the military. Children obtaining United States citizenship through their parents (ancestry) is no different than Seminole Nation membership requirements.

The United States Department of the Interior states that "[t]he tribes establish membership criteria based on shared customs, traditions, language, and Tribal blood." *Tribal Enrollment Process*, Tribes, https://www.doi.gov/tribes/enrollment (last visited July 22, 2022). "Tribal enrollment criteria are set forth in Tribal constitutions, articles of incorporation or ordinances." *Id.* It has always been understood that Indian tribes have the power to determine their own membership because they are sovereign entities separate from Federal and State governments. Because of this understanding, Indian tribes have traditionally established the guidelines for choosing their members using criteria developed through their own independent reasoning, guidelines, and sovereignty.

Historically, some Indian tribes have made membership decisions in conjunction with the amount of Indian Blood (or blood quantum) that a person can prove. In reality, and in its best light, the idea of Indian Blood is nothing more than proof of ancestry. The original concept of Indian Blood began as an assumption of ethnicity of a person based upon appearance or unsubstantiated claims of an individual. These assumptions of Indian Blood were generally made by federal agents compiling a Tribal census with no scientific basis, and the unsubstantiated claims of individual Tribal members that rarely spoke English or knew their grandparents, let alone the entire ethnic history of their ancestors. In fact, Indian Blood was originally used by federal agents to deny United States citizenship to Native Americans. Because of these flaws in the concept of Indian Blood, many Indian tribes, including the Seminole Nation, have abandoned the use of Indian Blood, blood quantum, or "certified degree of Indian Blood" (CDIB) in determining eligibility for Tribal enrollment. Instead, the Seminole Nation, like many other Tribes, have exercised their sovereign authority to determine that proven ancestry is the basis for establishing eligibility for Tribal citizenship and/or membership. This method of establishing eligibility for citizenship and/or membership is no different than the ancestral basis for United States citizenship (establishing citizenship of a child through their parents).

Paradoxically, the use of Indian Blood, or blood quantum has been historically used by the Federal Government to dilute membership of Indian tribes into extinction, rather than the demand to increase membership we see today. Despite this attempt to extinguish Tribal membership, Indian tribes have historically been able to choose their own membership requirements, as they have the sovereign power to adopt any person, of any race, into their Nation (similar to the various methods of attaining United States citizenship). As discussed previously, some Indian tribes within the United States have established that eligibility for Tribal enrollment passes through one parent instead of both parents (matrilineal or patrilineal lineage). For example, the Santa Clara Pueblo determine enrollment eligibility solely from the father of a child. If the father of a child is not a member of the Santa Clara Pueblo, the child cannot be enrolled in the Tribe, even if the mother is enrolled. In this case, a child may be ineligible to be considered an Indian even though they have Indian Blood and ancestry. *Santa Clara Pueblo*, 436 U.S. 49, 53 (1978). Abrogating a Tribe's right to determine membership is to "destroy [its] cultural identity under the guise of saving it." *Santa Clara Pueblo*, 436 U.S. at 54.

Seminole Freedmen Citizenship

While there has been some attention given to allegations that Seminole Freedmen do not have access to Tribal services such as healthcare, life insurance, and even doses of the COVID-19 vaccine, the reality is that the Seminole Nation does not offer these Tribal services. Healthcare within the Seminole Nation is provided by the Indian Health Service (IHS), an agency within the United States Department of Health and Human Services. IHS operates the Wewoka Indian Health Services Unit (WIHS), which is not affiliated with or controlled by the Seminole Nation. WIHS provides general health care including COVID-19 vaccinations in accordance with IHS and CDC (both federal agencies) guidelines.

Further, eligibility requirements for all Seminole Nation programs are governed by the funding source. Many of these funding sources include, but are not limited to, the Bureau of Indian

Affairs (BIA), an agency within the United States Department of Interior, IHS, the United States Department of Agriculture (USDA), the Native American Housing Assistance and Self Determination Act of 1996 (NAHASDA) as administered by the United States Department of Housing and Urban Development, the Bureau of Indian Education (BIE), an agency with the United States Department of Interior, and the Johnson-O'Malley Program (JOM), a program of the BIE. Eligible Seminole Nation Members and Freedmen Citizens may apply for and receive services if criteria are met. Many of these services require a CDIB card as federal criteria, and not as a requirement of the Seminole Nation. A CDIB card is an identification card issued by the BIA.

The key distinguishing feature of the Seminole Nation General Council is the preservation of Freedmen Citizens and their representation on General Council, the governing legislative body of the Seminole. As described above, the Seminole Nation Freedmen are eligible for membership in two (2) Bands, Dosar Barkus Band and Bruner Band, with each having two (2) Band representatives that are members of the General Council. Freedmen Citizens have a voice in the government of the Seminole Nation. If the five basic civil rights enjoyed by all citizens of the U.S include freedom of speech, religion, press, assembly, and the right to petition the government, the Seminole Freedmen enjoy all these rights within the Seminole Nation.

Finally, any treaty between the United States and an Indian tribe must be viewed through the eyes of those who wrote it and those who had no choice but to agree to it. *Tulee v. Washington*, 315 U.S. 681, 684-85 (1942); *Carpenter v. Shaw*, 280 U.S. 363 (1930). Consideration and weight must be given to the chosen language and its intent, the atmosphere in which it was constructed, and most importantly the goal of the Federal Government. According to the United States Constitution, Article VI, Clause 2, treaties are the supreme law of the land. This means that treaties are to be followed even to the extent that they conflict with state or lower-level laws. Based on this Constitutional tenet, both the Federal Government and the Seminole Nation are bound by the provisions of the 1866 Treaty, as this treaty has never been terminated. While the Seminole Nation has a duty to its people, the Federal Government has a larger and over-arching duty to honor its promises, commitments, and obligations to all citizens of the United States.

In Response to Comments About NAHASDA

The Seminole Nation submits its Indian Housing Plan (IHP) each year as required by the Federal Government. This plan does not identify the enrollment of Seminole People and is not based upon enrollment numbers. True and accurate enrollment numbers of the Seminole Nation are available and reported to the Federal Government. Seminole Freedmen are represented and present within the policies of the Housing Authority of Seminole Nation, preference within policy is used as governed and patterned by federal law. In addition, Seminole Freedmen are included in all rental assistance policies and additional appropriations granted from the American Rescue Plan Act (ARPA) funding for the Housing Authority of the Seminole Nation of Oklahoma (HASNOK). Any testimony implying that the Seminole Nation received NAHASDA or supplemental ARPA housing funding using Freedmen enrollment and then excluding the Seminole Freedmen is either misleading or blatantly incorrect. The decisions of other sovereign Indian tribes to determine their housing policies is outside the control of Seminole Nation.

Seminole County Demographics

The Seminole Nation has limited resources and is continually working with a fragile Tribal infrastructure that has yet to overcome historical poverty, previous lack of protection promised by treaties, loss of land base and valuable oil minerals, and decisions that prevented prosperity for the Seminole Nation. The current geographic land base of the Seminole Nation exists within Seminole County, Oklahoma. In Seminole County, 24.3% of all residents, almost twice the national average, live below the poverty level. While the demand for affordable housing increases, the number of houses on the market in Seminole County has decreased by over 9% in recent months. This decrease in affordable housing is magnified by the increase in housing prices due to inflation and other factors. Factors contributing to the housing shortage and inability of residents to obtain affordable housing include sky-rocketing utility costs and increased gas prices. The average work commute for citizens in Seminole County is 23 miles per day. To state that there is a shortage of affordable or Tribal housing within the Seminole Nation for Seminole Freedmen only reinforces the lack of affordable housing for all persons living in Seminole County. There is a waiting list for Tribal housing. There is a waiting list for all affordable housing. While many other tribes have tremendous resources to allocate among their membership, the Seminole Nation does not. The Nation is doing its best with the limited resources that it has. The Seminole Nation cannot change or improve the status of Seminole People until the Federal Government honors its obligations to the Seminole Nation in a meaningful way, honoring its treaties and obligations.