

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

MARILYN VANN, RONALD MOON,)
DONALD MOON, HATTIE CULLERS,)
CHARLENE WHITE, RALPH THREAT,)
FAITH RUSSELL, ANGELA SANDERS,)
and THE FREEDMEN BAND OF THE)
CHEROKEE NATION OF OKLAHOMA,)

Plaintiffs)

v.)

DIRK KEMPTHORNE, Secretary of the)
United States Department of the Interior,)

UNITED STATES DEPARTMENT OF)
THE INTERIOR,)

CHEROKEE NATION OF OKLAHOMA,)

CHADWICK SMITH, Individually and in)
His Official Capacity, and)

John Does, Individually and in their official)
Capacity,)

Defendants.)

Case No.: 1:03cv01711 (HHK)
Judge: Henry H. Kennedy
Docket Type: Civil Rights
(non-employment)

Date Stamp: 08/11/03

PLAINTIFFS' THIRD AMENDED COMPLAINT

Plaintiffs Marilyn Vann, Ronald Moon, Donald Moon, Hattie Cullers, Charlene White, Ralph Threat, Faith Russell, and Angela Sanders, citizens of the Cherokee Nation of Oklahoma, as the direct descendants of individuals enrolled on Dawes Commission Rolls of the Cherokee Tribe, under the inclusive Freedmen category of the Dawes Commission Rolls (hereinafter referred to as "Freedmen"), and the Freedmen Band of the Cherokee Nation of Oklahoma, an entity established by and for individuals comprised under the aforementioned criteria (hereinafter referred to as "Freedmen"), by and through their undersigned counsel, for

their complaint against Dirk Kempthorne, Secretary of the United States Department of the Interior, and the United States Department Of The Interior (“Department” or “DOI”), an agency of which is the Bureau of Indian Affairs (“BIA”), The Cherokee Nation of Oklahoma (“CNO”), and Chadwick Smith, individually allege as follows:

PRELIMINARY STATEMENT

1. Plaintiffs, individual citizens of the Cherokee Nation of Oklahoma and an entity comprised of individual citizens, bring this civil suit for declaratory and injunctive relief arising under the Constitution and laws of the United States to vindicate the rights of a long-oppressed and disadvantaged people. Plaintiffs bring this action to redress long-standing and invidious racial discrimination against them by the BIA, the CNO, and Chadwick Smith, individually. This discrimination has excluded the Freedmen from their right to vote in elections held on May 24, 2003, and on July 26, 2003 (together, the “2003 Elections”). The May 24 election determined the Chief and other elected officials of the Cherokee Nation and ratified an amendment to the Cherokee Constitution to strike the clause “No amendment or new Constitution shall become effective without the approval of the President of the United States or his authorized representative.” The July 26 election ratified a new Cherokee Constitution that changed the structure of the Cherokee government.

2. On or about August 6, 2003, the BIA, assisted by its local officials, reversed its position that the Act of 1970 mandates that the Cherokee Nation of Oklahoma submit its election provisions to the Department of Interior prior to holding an election, and the BIA recognized the election of Chadwick Smith as Chief of the Cherokee Nation of Oklahoma.

3. The BIA’s decision to recognize the illegal election (i) is in direct opposition to the Department’s fiduciary duty to protect the Cherokee Nation from unlawful

elections; the BIA has the responsibility and indeed, the duty to intervene and attempt to protect those rights through appropriate remedies, *Seminole Nation v. Norton*, 223 F. Supp. 2d. 122 (D.D.C. Sept. 23, 2002) (“*Seminole IP*”), (ii) is in direct opposition to the Act of 1970, (iii) is a reversal of its position stated in numerous letters to Cherokee Chief Chad Smith informing him of the requirement of submitting election procedures prior to holding the Election, (iv) is in opposition to the BIA’s position toward the Seminole Nation of Oklahoma regarding virtually the same matter, and (v) is in opposition to the 13th Amendment to the U.S. Constitution.

4. The BIA has taken action to enforce the full citizenship rights guaranteed by treaty to the Seminole Freedmen by refusing to recognize the results of a Seminole election from which Freedmen voters had been illegally excluded and by refusing to recognize any government-to-government relationship with that illegally elected administration. *Seminole II*. In another case, the BIA refused to recognize the Seminole Nation or the government-to-government relationship where the Seminole Freedmen were voted out of the Seminole Nation by a Constitutional Amendment Referendum Election. *Seminole Nation of Oklahoma v. Norton*, 206 F.R.D. 1 (D.D.C. Sept. 27, 2001) (CKK) (*Seminole I*). In both cases, the basis for the BIA’s position, upheld by this Court, was that the Seminole Freedmen were ensured full citizenship rights under a treaty entered into between the United States and the Seminole Nation of Oklahoma in 1866.

5. The Cherokee Tribe signed an 1866 Treaty with the United States affording the same citizenship protections to the Cherokee Freedmen that were afforded the Seminole Freedmen in the Seminole Treaty of 1866. There is thus no principled distinction between this litigation and that involving the Seminoles. The BIA’s determination to recognize

the results of a Cherokee Election in which Cherokee Freedmen citizens had been illegally prevented from exercising their right to vote is a breach of the BIA's fiduciary duty.

6. The CNO has violated the Treaty of 1866 and the 13th Amendment to the Constitution of the United States by denying its Freedmen citizens their full citizenship rights, based solely on their status as Freedmen.

7. Chadwick Smith has violated the Act of 1970 by refusing to submit the CNO Voting Regulations to the Secretary of Interior.

8. On June 9, 2006, the Cherokee Defendants notified the DOI that the CNO considered the 2003 constitutional amendments approved by a ruling of the Cherokee Nation Judicial Appeals Tribunal. *See* letter from Chief Chadwick Smith attached as Exhibit 1.

9. As of June 9, 2006, the DOI had not decided whether to approve the 2003 constitution. In a letter dated May 21, 2007, the DOI informed the CNO of its decision to deny approval of the amendments because the Freedmen did not vote in the election ratifying the constitution. *See* letter attached as Exhibit 2.

10. The Cherokee Defendants took the following actions based upon the 2003 Constitution:

- a. The Cherokee Defendants dissolved the Judicial Appeals Tribunal ("JAT"), the highest Cherokee court, after a JAT ruling in favor of Freedmen citizenship. *See Allen v. Cherokee Nation Tribal Council*, No. JAT 04-09 (Cherokee Nation Jud. App. Trib., Mar. 7, 2006);
- b. The Cherokee Defendants appointed justices to the newly established Cherokee Supreme Court;

- c. The new Cherokee Supreme Court ruled that the Freedmen could be expelled from the Cherokee Nation by a vote of the Cherokee citizens;
- d. On March 3, 2007, the Cherokee Defendants held a popular election in which they approved a constitutional amendment denying citizenship rights to the Freedmen;
- e. The Cherokee Defendants implemented a law severing the citizenship of the Freedmen and stopped processing Freedmen citizenship applications, including that of Plaintiff Angela Sanders;
- f. The Cherokee Defendants notified Freedmen they had been expelled from the Cherokee Nation;
- g. The Cherokee Defendants notified Freedmen that their medical benefits had been severed;
- h. In response to a motion for a preliminary injunction filed in this action, the Cherokee Defendants temporarily restored rights to Cherokee Freedmen through a Cherokee court order. The restored rights did not include the right to run for office as guaranteed by the Treaty of 1866 because Cherokee law prohibited Freedmen from running for office.
- i. The Cherokee Defendants restricted the Freedmen's right to register to vote, resulting in only 1,000 of 25,000 potential Freedmen voters actually registering.

- j. The Cherokee Defendants did not permit Freedmen to vote with equal standing in the June 23 election:
 - 1. Freedmen voters were turned away at the polls.
 - 2. Freedmen voters who attempted to vote in person were forced to vote challenge ballots which were placed in separate envelopes.
- k. The Cherokee Defendants denied Freedmen the right to vote on ratification of the 2003 Constitution. The sole ballot issue at the June 23 election was the proposal to remove United States oversight.

PARTIES

11. Plaintiffs Marilyn Vann, Ronald Moon, Donald Moon, Hattie Cullers, Charlene White, Ralph Threat, Faith Russell, and Angela Sanders are Freedmen of the Cherokee Nation. Each named Plaintiff can trace his or her ancestry to the Index and Final Rolls of Citizens and Freedmen of the Cherokee Tribe in Indian Territory approved by Act of Congress dated June 21, 1906 (34 Stat. 325) (“Dawes Rolls”) as compiled by the United States through the Dawes Commission, and is, accordingly, an enrolled member of the Cherokee Nation. Plaintiff, the Freedmen Band of the Cherokee Nation of Oklahoma, is a political entity organized under a constitution and represented by leaders who as individuals can trace ancestry to the Cherokee Freedmen Dawes Rolls of 1906.

12. Defendant Dirk Kempthorne is the Secretary of the Department of the Interior (“Kempthorne” or “Secretary”) and the principal governmental official responsible for the administration of Native American affairs and the operations of the BIA. Kempthorne is an

officer of the United States of America (“United States”), which is the custodian and trustee of all Native American communal property.

13. Defendant United States Department of the Interior (“DOI”) is and at all relevant times was an agency of the United States government. The DOI includes, among various agencies, the BIA and is responsible for the operations of the BIA.

14. The CNO is an Indian Tribe whose Constitution states “The Cherokee Nation is an inseparable part of the Federal Union. The Constitution of the United States is the Supreme law of the land; therefore, the Cherokee Nation shall never enact any law which is in conflict with Federal law.” The CNO boundaries of sovereignty have been limited by its own Constitution, the 1866 Treaty with the United States, the Curtis Act of 1902, and the Agreement with the United States of 1901.

15. Chadwick Smith is the Principal Chief of the CNO and the principal government official responsible for the enforcement of the CNO Constitution and protection of all citizens of the CNO. Article 6, Section 10 of the CNO Constitution provides “The Principal Chief shall cause the laws of the Cherokee Nation to be faithfully executed, and shall conduct in person and in such manner as prescribed by law, all communications and business of the Cherokee Nation.”

JURISDICTION AND VENUE

16. This Court has jurisdiction over Plaintiffs’ claims pursuant to 28 U.S.C. §§ 1331 and 1362. Jurisdiction to review agency action is invoked pursuant to the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 702-703. Declaratory relief is sought pursuant to 28 U.S.C. §§ 2201-2202. Equitable relief is sought pursuant to 28 U.S.C. § 1343.

17. This action arises under the Constitution and laws of the United States, including, but not limited to, the Thirteenth Amendment to the Constitution of the United States, the Treaty with the Cherokee Indians, July 19, 1866, 14 Stat. L., 799 (“1866 Treaty”), Pub. L. No. 91-495, 84 Stat. 1091 (“Act of 1970”), and the Indian Civil Rights Act of 1968, 25 U.S.C. §§ 1301 *et seq.*

18. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e), as Defendant Kempthorne and Defendant DOI reside in this District.

19. The United States has waived its and Defendant Kempthorne’s sovereign immunity to the claims herein by virtue of (without limitation), the APA and the United States’ fiduciary and trustee obligations towards the Cherokee Nation and its citizens. Defendant Kempthorne, in turn, has acted beyond his statutory authority by allowing his subordinate officers to violate the laws and the Constitution of the United States, as alleged herein, and thus has no sovereign immunity under the doctrines established by *Ex Parte Young*, 209 U.S. 123, 28 S. Ct. 441 (1908), *Larsen v. Domestic and Foreign Commerce Corp.*, 337 U.S. 682, 69 S. Ct. 1457 (1949) and *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388, 91 S. Ct. 1999 (1971).

20. The CNO’s sovereignty is limited by the Constitution and Acts of the United States by virtue of (without limitation) the 13th Amendment to the Constitution of the United States, the Treaty of 1866 and the 1866 Civil Rights Act. The CNO’s sovereign immunity from suit for violations of the Treaty of 1866 has been expressly waived in Article XII of said Treaty.

21. Defendant Smith has acted beyond the scope of his authority by allowing his subordinate officers to violate the laws and the Constitution of the CNO and the United

States, as alleged herein, and thus has no sovereign immunity under the doctrines established by *Ex Parte Young*, 209 U.S. 123, 28 S. Ct. 441 (1908), *Larsen v. Domestic and Foreign Commerce Corp.*, 337 U.S. 682, 69 S. Ct. 1457 (1949), *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388, 91 S. Ct. 1999 (1971), *Fletcher v. U.S.*, 116 F.3d 1315 (10th Cir. 1997), and *Turner v. Martire*, 2000 WL 964931, 97 Cal. Rptr.2d 863 (Cal. App. 4 Dist. 2000).

22. The Cherokee Nation courts have no jurisdiction over the current suit because the Treaty of 1866 and 13th Amendment to the United States Constitution grant federal court jurisdiction over the claims raised in the current suit. Further, the issues raised in this Complaint have already been exhausted in the Cherokee Nation courts. In any event, exhaustion would be futile.

23. In this action, Plaintiffs seek a declaratory judgment under the Declaratory Judgment Act, 28 U.S.C. § 2201, setting forth their rights because of Defendants' violations of the Constitution and laws of the United States, and a declaration that the BIA cannot recognize the elected officials or the amended Cherokee Constitution, both put into place via the illegal 2003 Elections, until such time as an election is held that recognizes and permits the Freedmen the right to vote in such election – in other words, a declaration that the United States, in its capacity as fiduciary and trustee, may not approve any election or other act by the Cherokee Nation in derogation of the rights of its Freedmen citizens. In addition, Plaintiffs seek a finding pursuant to the APA that the Federal Defendants' conduct has been arbitrary, capricious, an abuse of discretion, and not in accordance with law. Plaintiffs also request that a trustee be appointed to ensure that their civil rights are protected, as was done in the late 1800s.

24. Plaintiffs also seek declaratory relief under 28 U.S.C. § 1343 against the CNO and against Chadwick Smith, individually, setting forth their rights because of Defendants' civil rights violations of the 1866 Treaty, the Act of 1970, and the Constitution and laws of the United States, and a declaration that the CNO and Chadwick Smith, individually, cannot elect new officials or amend the Cherokee Constitution in an election which denies the Freedmen the right to vote.

ALLEGATIONS COMMON TO ALL COUNTS

Background

25. In the 1830s, Cherokees were forcibly removed from their lands in the southeastern United States and forced to migrate to Indian Territory, present day Oklahoma, in what has become known as the Trail of Tears. Among those persons in the Trail of Tears were slaves of Cherokees as well as free intermarried Blacks or children of mixed racial families.

26. In 1863, slavery was abolished and the Black Cherokees were emancipated by virtue of the 13th Amendment of the United States Constitution. In the same year, the Cherokee National Council also abolished slavery. Thereafter, all of the Black Cherokees became known as "Freedmen."

27. In 1866, the Cherokees and the United States entered into the Treaty of July 19, 1866 (ratified July 27, 1866; proclaimed Aug. 11, 1866), 14 Stat. L. 799 (the "Treaty of 1866"). The Treaty of 1866 provides that the Cherokee Nation "hereby covenant[s] and agree[s] that never hereafter shall either slavery or involuntary servitude exist in [the Cherokee Nation]" and that "all freedmen who have been liberated . . . as well as all free colored persons . . . and their descendants, shall have all the rights of native Cherokees." Treaty of 1866, art. IX. The Freedmen are given the right to elect officials and to representation "according to numbers" on

the national council. *Id.* arts. V–VI. They are also given the right to sue in federal court if an action arose between a Freedman and another member of the Cherokee Nation. *Id.* art. VII. The Treaty of 1866 guarantees the Freedmen that laws “shall be uniform throughout said nation” and provides that if “any law, either in its provisions or in the manner of its enforcement, in the opinion of the President of the United States, operate unjustly in [the Freedmen] district, he is hereby authorized and empowered to correct such evil.” *Id.* art. VI. Finally, the Treaty provides that “[n]o law shall be enacted inconsistent with the Constitution of the United States, or laws of Congress, or existing treaty stipulations with the United States.” *Id.* art. XII.

28. The Treaty of 1866 contains the following provisions:

ARTICLE 4.

All the Cherokees and freed persons who were formerly slaves to any Cherokee, and all free negroes not having been such slaves, who resided in the Cherokee Nation prior to June first, eighteen hundred and sixty-one, who may within two years elect not to reside northeast of the Arkansas River and southeast of Grand River, shall have the right to settle in and occupy the Canadian district southwest of the Arkansas River, and also all that tract of country lying northwest of Grand River, and bounded on the southeast by Grand River and west by the Creek reservation to the northeast corner thereof; from thence west on the north line of the Creek reservation to the ninety-sixth degree of west longitude; and thence north on said line of longitude so far that a line due east to Grand River will include a quantity of land equal to one hundred and sixty acres for each person who may so elect to reside in the territory above-described in this article: *Provided*, That part of said district north of the Arkansas River shall not be set apart until it shall be found that the Canadian district is not sufficiently large to allow one hundred and sixty acres to each person desiring to obtain settlement under the provisions of this article.

ARTICLE 5.

The inhabitants electing to reside in the district described in the preceding article shall have the right to elect all their local officers and judges, and the number of delegates to which by their numbers they may be entitled in any general council to be established in the

Indian Territory under the provisions of this treaty, as stated in Article XII, and to control all their local affairs, and to establish all necessary police regulations and rules for the administration of justice in said district, not inconsistent with the constitution of the Cherokee Nation or the laws of the United States; *Provided*, The Cherokees residing in said district shall enjoy all the rights and privileges of other Cherokees who may elect to settle in said district as hereinbefore provided, and shall hold the same rights and privileges and be subject to the same liabilities as those who elect to settle in said district under the provisions of this treaty; *Provided also*, That if any such police regulations or rules be adopted which, in the opinion of the President, bear oppressively on any citizen of the nation, he may suspend the same. And all rules or regulations in said district, or in any other district of the nation, discriminating against the citizens of other districts, are prohibited, and shall be void.

ARTICLE 6.

The inhabitants of the said district hereinbefore described shall be entitled to representation according to numbers in the national council, and all laws of the Cherokee Nation shall be uniform throughout said nation. 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, and to adopt the means necessary to secure the impartial administration of justice, as well as a fair and equitable application and expenditure of the national funds as between the people of this and of every other district in said nation.

ARTICLE 7.

The United States Court to be created in the Indian Territory; and until such court is created therein, the United States district court, the nearest to the Cherokee Nation, shall have exclusive original jurisdiction of all causes, civil and criminal, wherein an inhabitant of the district hereinbefore described shall be a party, and where an inhabitant outside of said district, in the Cherokee Nation, shall be the other party, as plaintiff or defendant in a civil cause, or shall be defendant or prosecutor in a criminal case, and all process issued in said district by any officer of the Cherokee Nation, to be executed on an inhabitant residing outside of said district, and all process issued in said district by any officer of the Cherokee Nation outside of said district, to be executed on an inhabitant residing in

said district, shall be to all intents and purposes null and void, unless indorsed by the district judge where such process is to be served, and said person, so arrested, shall be held in custody by the officer so arresting him, until he shall be delivered over to the United States marshal, or consent to be tried by the Cherokee court: *Provided*, That any or all the provisions of this treaty, which make any distinction in rights and remedies between the citizens of any district and the citizens of the rest of the nation, shall be abrogated whenever the President shall have ascertained, by an election duly ordered by him, that a majority of the voters of such district desire them to be abrogated, and he shall have declared such abrogation: *And provided further*, That no law or regulation to be hereafter enacted within said Cherokee Nation or any district thereof, prescribing a penalty for its violation, shall take effect or be enforced until after ninety days from the date of its promulgation, either by publication in one or more newspapers of general circulation in said Cherokee Nation, or by posting up copies thereof in the Cherokee and English languages in each district where the same is to take effect, at the usual place of holding district courts.

ARTICLE 9.

The Cherokee Nation having, voluntarily, in February, eighteen hundred and sixty-three, by an act of the national council, forever abolished slavery, hereby covenant and agree that never hereafter shall either slavery or involuntary servitude exist in their nation otherwise than in the punishment of crime, whereof the party shall have been duly convicted, in accordance with laws applicable to all the members of said tribe alike. They further agree 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: *Provided*, That owners of slaves so emancipated in the Cherokee Nation shall never receive any compensation or pay for the slaves so emancipated.

ARTICLE 10.

Every Cherokee and freed person resident in the Cherokee Nation shall have the right to sell any products of his farm, including his or her live stock, or any merchandise or manufactured products, and to ship and drive the same to market without restraint, paying

any tax thereon which is now or may be levied by the United States on the quantity sold outside of the Indian Territory.

29. In 1883, the Cherokee Tribal Council passed legislation that excluded the Freedmen and other tribal citizens without Cherokee blood, such as the Shawnees, Delawares and intermarried whites, from sharing in tribal assets.

30. In 1888, the United States Congress responded with legislation that required the Tribe to share its assets equally with the Freedmen and other adopted citizens. Act of Oct. 19, 1888, 25 Stat. 608-609. To determine the number of eligible Freedmen and provide for their equitable treatment, Congress sent a federal agent to make a full record of all those who were entitled to share in the dispersal of federal funds within the Cherokee Nation.

31. In 1889, 3,524 Freedmen were enrolled on a federal document called the Wallace Rolls to legitimate their claims to Cherokee Citizenship.

32. In 1890, as the Cherokee Tribe continued to resist the Freedmen's equal right to Cherokee citizenry, the United States Congress authorized the federal Court of Claims to adjudicate the rights of the Cherokee Freedmen. An Act to refer to the U.S. Court of Claims certain claims of the Shawnee and Delaware Indians and the freedmen of the Cherokee Nation, Oct. 1, 1890, 26 Stat. 636.

33. *Moses Whitmire, Trustee for The Cherokee Freeman v. The Cherokee Nation and the United States*, 30 Ct. Cl. 138 (1895), held that the Freedmen were entitled to receive equal per capita payments of funds as equal citizens of the Cherokee Tribe. The Court of Claims held that tribal sovereignty could not be exercised in a manner that breached the Cherokee Nation's treaty obligations with the United States. Ruling in favor of the Freedmen,

the court awarded them \$903,365 as their rightful share of \$7,240,000 that had been generated from the sale of tribal lands.

34. In 1893, the United States government established the Dawes Commission for the purpose of creating authoritative membership rolls for all of the Native American tribes in Oklahoma, including the Cherokee Nation. Although not required or authorized to do so, by 1898 the Dawes Commission began enrolling the Black Cherokees on a “Freedmen Roll”; other Cherokees were enrolled on a separate “Blood Roll.” The effect of this gratuitous act of racial segregation in compiling the Dawes Rolls – imposed upon the Cherokee Nation by the Dawes Commission – was to divide the Cherokee Nation into “Freedmen” (those with some Black ancestry) and “Blood Indians.” This division was illogical and inconsistent; a Cherokee who was half Native American and half Black was designated a “Freedman”; one who was one quarter Native American and three quarters White was designated a Cherokee “by blood.” No effort was made to record the percentage of Native American blood of those listed on the “Freedmen Roll,” though historians agree that many of the Freedmen enrollees had mixed Native American ancestry. As a result, throughout the segregation years the Freedmen were subjected to Jim Crow laws and other forms of state-sanctioned discrimination.

35. In 1898, Congress passed the Curtis Act, providing for allotment of communal tribal lands to all citizens of Cherokee Nation including Freedmen. The Curtis Act also extended federal court jurisdiction over Indian Territory and abolished tribal courts.

36. In 1901, the CNO signed an agreement with the United States that provided for the allotment of tribal lands and abolished the tribal government of the CNO effective March 4, 1906.

37. In *Daniel Red Bird v. United States*, 203 U.S. 76, 27 S. Ct. 29 (1906), the Supreme Court affirmed the citizenship and proprietary rights of the Freedmen under the 1866 Treaty as opposed to the intermarried whites that did not have such rights.

38. In 1907, the Dawes Commission closed the final rolls of the Cherokee Tribe. The Dawes Commission created two separate rolls for the Cherokee Nation. Individuals possessing African blood – as unscientifically determined by the Dawes Commission officials – would be placed on the Cherokee Freedmen Roll. If an individual was half Black and half Cherokee Native American, he or she would be placed on the Freedmen Roll with no notation of Indian Blood. The Dawes Commission, however, stated that those on the Freedmen Roll were on equal footing with those on the so-called “Blood Roll.”

39. BIA’s Solicitor’s Opinion, October 1, 1941, 1 Op. Sol. On Indian Affairs 1076 (U.S.D.I. 1979), addressed the question whether the Freedmen are entitled to vote on the acceptance of a Cherokee Constitution in pursuance of section 3 of the Oklahoma Indian Welfare Act (“OIWA”). The opinion states, in relevant part:

As the membership rights of the Freedmen in the Five Civilized Tribes have been fixed by Treaties, which are the equivalent of statutes, and by formal tribal action in pursuance of these treaties, the Secretary would not appear to be authorized to issue regulations which would deprive the Freedmen of their right to vote on constitutions to be adopted by the Five Civilized Tribes under the Oklahoma Indian Welfare Act.

The CNO never reorganized under the OIWA, but the treaties and other agreements are still in effect to provide the Freedmen with full membership rights, including voting. As such, neither the BIA nor the CNO can deprive the Freedmen of their right to vote.

40. The Act of 1970, enacted by Congress, states that, notwithstanding any other provisions of law, the principal chiefs of the Cherokee, Choctaw, Creek, and Seminole

Tribes of Oklahoma and the governor of the Chickasaw Tribe of Oklahoma shall be popularly selected by the respective tribes in accordance with procedures established by the respective tribes. It further mandates that “such established procedures shall be subject to approval by the Secretary of the Interior.”

41. On June 26, 1976, Cherokee Freedmen voted in a Cherokee election on the adoption of a Cherokee Constitution (“1976 Cherokee Constitution.”).

42. Article I of the 1976 Cherokee Constitution states that the Cherokee Nation is an inseparable part of the Federal Union, and that the Constitution of the United States is the Supreme law of the land, and therefore, the Cherokee Nation shall never enact any law which is in conflict with any Federal law.

43. Article II of the 1976 Cherokee Constitution states, in pertinent part, that the appropriate protections of the Civil Rights Act of 1964 shall apply to all members of the Cherokee Nation.

44. Article III, Section 1, of the 1976 Cherokee Constitution states: “All members of the Cherokee Nation must be citizens as proven by reference to the Dawes Commission Rolls...” The Freeman can prove direct lineage to the Dawes Commission Rolls.

45. Article V, Section 7 of the 1976 Cherokee Constitution states, in pertinent part: “Laws or enactments which are required by Federal Statutes to be approved shall be transmitted immediately upon enactment provided by Section 11 of this Article to the President of the United States or his authorized representative.”

46. Also in the 1976 Cherokee Constitution, Article IX, Elections, Section 1, states in relevant part: “The Council shall enact an appropriate law not inconsistent with the provisions of this Constitution that will govern the conduct of the elections. . .” Section 2 limits

the candidacy for Council to members by blood, but does not restrict voting to blood members only. Thus, pursuant to the 1976 Cherokee Constitution, the Freedmen are entitled to citizenship with voting rights.

47. Freedmen were excluded from voting in the 2003 Elections pursuant to the Code of the Cherokee Nation, which provides that “[t]ribal membership is derived only through proof of Cherokee blood based on the Final Rolls” of the Dawes Commission. 11 C.N.C.A. § 12.

The May 24, 2003, Election & Defendants’ Reversal of Position

48. On March 15, 2002, Neal McCaleb, Assistant Secretary of Indian Affairs, wrote to Cherokee Chief Chadwick Smith (“March 15, 2002, Letter”) stating that he had no objection to the Cherokee Constitutional Amendment striking the required approval of the President of the United States or his authorized representative for changes to the Cherokee Constitution, subject to certain understandings. First, all members of the Cherokee Nation, including the Freedmen descendants who are otherwise qualified, must be provided an equal opportunity to vote in the election. Second, under current law, no amendment of the Nation’s constitution can eliminate the Freedmen from membership in the Nation absent Congressional authorization. And lastly, notwithstanding any amendment of the Nation’s Constitution, the Act of 1970, until it is repealed or amended, will still require the Secretarial approval of the procedures for the election of the leaders of the Cherokee Nation and the other Five Civilized Tribes. *See* Exhibit 5.

49. In a series of subsequent letters, Federal Defendants (i) denied the validity of the March 15, 2002, Letter; (ii) informed Chief Smith, citing *Seminole I*, of the requirement that prior to an election of the Principal Chief the election procedures must be submitted to the Secretary and must be approved; (iii) advised Raymond Vann of the Cherokee Nation Election

Commission that such compliance was required; (iv) notified Chief Smith on July 11, 2003, that the Nation had been previously advised on two occasions regarding the requirements of the Act of 1970 and asked the Nation to submit its current election laws for approval; (v) stated later in July 2003 that the procedures for selecting the Principal Chief of the Cherokee Nation are subject to approval by the Secretary, and that the BIA was “aware of no evidence that the Secretary has approved the current procedures for the election of the Principal Chief.” Importantly, this July 25, 2003, letter also stated that “the BIA views the situation to be identical to the one involving the Seminole Nation of Oklahoma” Copies of this correspondence and the CNO’s replies are attached hereto as Exhibits 6-14.

50. Upon information and belief, lobbyist Jack Abramoff donated \$1,500 to the campaign of Chadwick Smith for Principal Chief in 2003. *See* Exhibit 16.

51. Upon information and belief Jack Abramoff was retained and paid by Cherokee Nation Enterprises to lobby for “sovereignty issues” at some point during 2003. *See* Exhibit 17.

52. Following the BIA determination to not recognize the election of Chadwick Smith because it violated the 1970 Act, upon information and belief, Cherokee officials met with Steven Griles, Aurene Martin, and possibly other Interior Department officials to discuss the constitutional amendments.

53. On August 6, 2003, the BIA completely reversed its position. In a letter from Jeanette Hanna to Chief Smith, the BIA stated that it was “inappropriate and premature” “for the Department to question the validity of the Tribal officials. Based on the Nation’s Election Commission certification of the results of the May 24 election, the Department recognizes you as Principal Chief of the Nation.” *See* Exhibit 15.

54. In the same letter of August 6, 2003, Federal Defendants stated as follows: “The Department continues to have under review the May 24 Tribal election results on the proposed amendment of the Tribal constitution that would remove the requirement that future amendments be approved by the Secretary of the Interior.” *Id.*

55. The BIA has made a final agency decision on the election for Principal Chief. The BIA decided to not require the compliance of the Act of 1970 nor require submission of voter regulations. The BIA was on notice that the Freedmen citizens were not entitled to vote in the election.

56. On July 26, 2003, the CNO held an election to ratify several amendments to the 1976 Cherokee Constitution. The amendments changed the number of representatives on the National Council, created “at-large” seats on the National Council, dissolved the Judicial Appeals Tribunal and established in its place the Cherokee Supreme Court, changed the number of justices from three to five, and removed the provision in Article I that states “The Cherokee Nation is an inseparable part of the Federal Union. The Constitution of the United States is the Supreme law of the land; therefore, the Cherokee Nation shall never enact any law which is in conflict with any Federal law.” Freedmen were not permitted to vote in the July 26, 2003, election.

57. The highest Cherokee Court, the Judicial Appeals Tribunal (JAT), in *Allen v. Cherokee Nation Tribal Council*, JAT 04-09 (Cherokee Nation Jud. App. Trib., Mar. 7, 2006) ruled that the voting and membership laws that prohibited the Freedmen from voting in the May 2003 election were unconstitutional. The *Allen* Court also stated the Treaty of 1866 could be unilaterally abrogated by the Cherokee Nation through a popular vote of its citizens to define citizenship.

58. The Cherokee Nation began recognizing citizenship for the Freedmen wherein the Plaintiffs' citizenship was recognized.

59. On June 7, 2006, the Cherokee Nation Judicial Appeals Tribunal determined that the CNO could operate under the new Constitution ("1999 Constitution") ratified by CNO voters at the July 26, 2003, election. The 1999 Constitution, among other things, made several changes to the CNO government. Cherokee Freedmen were not permitted to vote for ratification of the 1999 Constitution. In addition, the Federal Defendants have not approved the 1999 Constitution pursuant to the terms of the existing 1976 Constitution. *In re* 1999 Constituion, JAT 05-04 (June 7, 2006).

60. Operating under the unapproved Constitution, the Cherokee Nation dissolved the Judicial Appeals Tribunal and created a new, larger Supreme Court and packed it with two new judges.

61. The new Supreme Court voted 3-2 that the Cherokee Nation could hold an election to expel the Freedmen. The two new judges made the difference because the holdover judges from the Judicial Appeals Tribunal ruled 2-1 that it could not.

62. After the *Allen* decision, Cherokee Nation citizens began circulating an initiative petition seeking to amend the Cherokee Constitution to remove the Freedmen's citizenship rights. The Cherokee Nation Supreme Court ruled that the initiative could be placed before Cherokee voters for ratification. Principal Chief Smith set an election date of March 3, 2007. The proposed amendment read as follows:

This measure amends the Cherokee Nation Constitution section which deals with who can be a citizen of the Cherokee Nation. A vote "yes" for this amendment would mean that citizenship would be limited to those who are original enrollees or descendents of Cherokees by blood, Delawares by blood, or Shawnees by blood as listed on the Final Rolls of the Cherokee Nation,

commonly referred to as the Dawes Commission Rolls closed in 1906. *This amendment would take away citizenship of current citizens and deny citizenship to future applicants who are solely descendants of those on either the Dawes Intermarried Whites or Freedmen Rolls.* A vote ‘no’ would mean that Intermarried Whites and Freedmen original enrollees and their descendants would continue to be eligible for citizenship. Neither ‘yes’ or a ‘no’ vote will affect the citizenship rights of those individuals who are original enrollees or descendants of Cherokees by blood, Delaware by blood, or Shawnees by blood as listed on the Final Rolls of the Dawes Commission Rolls closed in 1906.

63. Upon information and belief, CNO Chief Chad Smith supported the measure, called the Freedmen non-Indians, and stated that a vote in favor of the measure would require CNO citizens to be Indian.

64. The Cherokee Nation citizens approved the amendment on March 3, 2007, and the Cherokee Nation Defendants began implementing the amendment soon thereafter. On or about March 21, 2007, Plaintiffs received letters stating that their citizenship status had been changed following the March 3 election. *See Exhibit 3.* On March 28, 2007, Plaintiff Charlene White received another letter stating that “because of the Constitutional Amendment you are no longer eligible to receive medical benefits from the Cherokee Nation.” *See Exhibit 4.*

65. On March 28, 2007, Assistance Secretary Carl Artman sent a letter to Cherokee Nation officials stating that the 2003 Constitutional amendments were still under review.

66. On May 14, 2007, in response to a motion for preliminary injunction filed in this action, the Cherokee Nation District Court entered an order temporarily reinstating the Freedmen. On May 17, the Cherokee Nation District Court entered a second order reopening voter registration to Cherokee Freedmen for a period of nine days. Out of approximately 25,000 Freedmen, only about 2,800 have citizenship in the Cherokee Nation and only about 1,000 were able to register to vote for the June 23, 2007 general election.

67. On May 21, 2007, the DOI issued a decision disapproving the 2003 amendments to the Cherokee Constitution. *See* Exhibit 2. In the letter, Assistant Secretary Artman stated that he was concerned about the removal of the Freedmen in “apparent violation of the 1866 Treaty.” Assistant Secretary Artman also informed the CNO that until the provision requiring United States approval of amendments was removed from the Cherokee Constitution, all amendments would require approval. To date, the United States has not approved any amendments from the July 26, 2003, election.

68. In response to the disapproval of the May 24, 2003, amendment, the CNO placed on the June 23, 2007, general election ballot the same measure – to remove the requirement of United States approval for any amendment to the Cherokee Constitution. The CNO did not place the other amendments approved at the July 26, 2003 election on the June 23, 2007, election ballot. To date, Freedmen citizens have not been able to vote on the constitution that the CNO considers to be the governing document of the Tribe.

69. The June 23, 2007, general election was held under the 1999 Cherokee Constitution. “At-large” district representatives were elected. Freedmen were informed by letter that they would only be permitted to vote in the “at-large” districts. Upon information and belief, all “at-large” voting is required to be by absentee ballot.

70. Freedmen were treated as second-class citizens when attempting to exercise their right to vote at the June 23, 2007, election. Upon information and belief, Freedmen ballots were segregated from other ballots, placed in envelopes, and left on desks with no protection of the ballot. In addition, Freedmen were verbally abused by precinct workers. Freedmen Ruth Adair Nash was not permitted to place her ballot in the voting machine but instead was forced to put it in an envelope. The precinct worker told Ms. Nash “We wouldn’t

have this problem except for Marilyn Vann.” Upon information and belief, other Freedmen voters were turned away from the polls.

71. No Freedmen were permitted to run for office in the June 23, 2007, election. In addition, no seat on the National Council was for the Freedmen “according to their numbers” as required by the Treaty of 1866. Certain Freedmen, if permitted, would run for office.

72. Prior to the BIA’s abrupt reversal of position, Plaintiffs, through their counsel, notified Federal Defendants that the Freedmen were denied the right to vote in the May 24, 2003, Election and, as a matter of policy, the Freedmen had been stripped of their membership rights. Copies of June 10, 2003, and July 21, 2003, letters from Plaintiffs’ counsel, Jon Velie, are attached hereto as Exhibit 20.

73. Plaintiffs have exhausted their remedies before the BIA, and, further, their pursuit of any such remedies would be futile in light of the well-documented and pervasive discrimination against them.

74. Plaintiffs have no remedy with the tribal government because the CNO was not reorganized under the Oklahoma Indian Welfare Act, and, thus, the CNO court system is not an authorized tribal court as it was abolished under the Dawes Act, Curtis Act and the 1901 Agreement. Additionally, as in *Davis v. U.S.*, 343 F.3d 1282, 1293 (2003) (“*Davis II*”), it would be futile for the Freedmen to “seek adjudication in tribal forums” (internal quotation marks and citations omitted).

75. Plaintiffs have no remedy with the CNO because the citizenship granted to the Freedmen under the Treaty of 1866 and recognized by the Dawes Commission is exclusively a determination of the United States.

76. Plaintiffs have no remedy with the CNO because the Cherokee Nation Supreme Court is not lawfully constituted as it was created under the unapproved 1999 Cherokee Constitution.

77. Plaintiffs have no remedy with the CNO because the Cherokee Judicial Appeals Tribunal has already determined that the Cherokee Nation could abrogate the Treaty of 1866 with a Constitutional amendment popular vote.

78. Plaintiffs have final agency determination from the Department of Interior as the decision by Bureau of Indian Affairs Muskogee Area Director Jeanette Hanna specifically stated in a letter to Defendant Cherokee Nation of Oklahoma Principal Chief Chadwick Smith that the determination of elected officials was an issue to be resolved by the Cherokee Nation. *See* Exhibit 15.

79. In a letter dated June 9, 2006, Cherokee Nation Chief Chadwick Smith notified the Department of Interior that the Cherokee Nation was withdrawing its request for Interior's approval of the 1999 Constitution. *See* Exhibit 1. The Cherokee Nation stated that Interior approval was a moot issue.

80. According to prior Department of Interior precedent, the "BIA has the authority *and the responsibility* to decline to recognize the results of a tribal election when it finds that a violation of the [Indian Civil Rights Act] has tainted the election results." *United Keetoowah Band of Cherokee Indians in Oklahoma v. Muskogee Area Director*, 22 IBIA 75, 83 (1992) (emphasis added). By continuing to recognize the Cherokee Nation of Oklahoma and its Constitution that was not voted on by all its members, including the Cherokee Freedmen, the Department of Interior has breached its fiduciary duty to protect the Freedmen.

81. Despite the actions of the Cherokee Nation in allegedly approving the 1999 Cherokee Constitution, the United States must still fulfill its statutory obligations to protect the Cherokee Freedmen and refuse recognition of the Cherokee Nation government and 1999 Cherokee Constitution until such time as the Cherokee Nation will affirm the rights of the Cherokee Freedmen.

82. Upon information and belief, the BIA denies Cherokee Freedmen Certificate of Degree of Indian Blood (“CDIB”) cards as a matter of policy.

83. Upon information and belief, the CNO received federal funding distributed by the DOI for the benefit of Cherokee citizens. Upon information and belief, the BIA has knowledge that the CNO is distributing funds under these federal programs in a discriminatory manner. In particular, Cherokee Freedmen are denied the right to receive benefits from these programs by virtue of their status as Freedmen.

84. Upon information and belief, the Cherokee Nation has taken the position that the Freedmen are non-Indians whose citizenship has been revoked by popular vote of Cherokee citizens on March 3, 2007.

85. Upon information and belief, the Cherokee Nation has implemented law and/or policy that has resulted in halting citizenship grants to Freedmen applicants.

86. Upon information and belief, the Cherokee Nation will not process and grant any more citizenship applications to Freedmen.

87. Upon information and belief, the status of the Freedmen citizenship in the Cherokee Nation is temporary and awaiting final determination by Cherokee Courts, which are not lawfully constituted, do not have the right to determine citizenship for the Freedmen, and if it lawfully constituted and have the right to make the determination have already determined that

the Freedmen could be expelled by a vote of the citizens, which would have the effect of abrogating the Treaty of 1866.

88. Plaintiffs have no adequate remedy at law.

FIRST CAUSE OF ACTION

(Violation of United States Constitution / Federal Law)

(Against All Defendants)

89. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 - 88 as though set forth fully herein.

90. The BIA has breached its fiduciary duty to protect the voting rights and rights to run for office of the Freedmen so that as citizens they can participate in the fundamental right to elect their leaders, run for office, vote for Freedmen representatives, and determine whether their Constitution should be amended. Their rights to participate in this solemn process have been stripped on the basis of their race, with the knowledge that the Cherokee Nation will be ruled by officials that will be recognized by the United States although citizens were forbidden to vote. The recognition will result in millions of dollars of United States funds being dispersed to officials empowered by an unlawful election despite the demands and requests for the BIA's protection of the oppressed Freedmen citizens and elected officials of the Cherokee Nation.

91. Defendants' acts violate, without limitation, the United States Constitution, the Act of 1970, the Cherokee Constitution, the Treaty Between the United States and the Cherokee Indians, March 21, 1866, 14 Stat. 755, and the Indian Civil Rights Act, 25 U.S.C. §§ 1301, *et seq.*

92. The Defendants directly violate the 13th Amendment of the Constitution in perpetuating "badges" of slavery. *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1968). The Defendants violate the 15th Amendment, which prohibits the U. S. from denying the right to vote "on account of race, color, or previous condition of servitude" by its express action in permitting

the discriminatory regulations of the Cherokee Nation that intentionally exclude its Freedmen citizens from the voting process.

93. By reason of the foregoing, a ripe and justiciable controversy exists, and Plaintiffs have standing to assert their rights. As a result of the foregoing, Plaintiffs are entitled to declaratory and injunctive relief to preserve their rights as members of the Cherokee Nation.

SECOND CAUSE OF ACTION

(Judicial Review of Agency Action Under the APA)

(Against the Federal Defendants)

94. Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1 – 93 as if set forth fully herein.

95. The Federal Defendants are responsible for protecting the interests of the Cherokee Nation, including the interests of the Freedmen.

96. By failing to require the filing of procedures prior to the Election, the Federal Defendants have breached their fiduciary duty.

97. By recognizing Chadwick Smith as Principal Chief of the Cherokee Nation, as well as other officials elected to office in the illegal Election, the Federal Defendants have approved the racially discriminatory and unlawful disenfranchisement of the Freedmen.

98. By deferring consideration of the legality of the amendment of the Cherokee Constitution, the Federal Defendants have given it de facto approval, despite its having been effected illegally because of the unlawful preclusion of the Freedmen's voting rights.

99. By failing to follow the law as set forth in the *Seminole I* and *Seminole II* decisions, the Federal Defendants have failed to follow their own recognized laws and policies and have discriminated against the Cherokee Freedmen to their injury and prejudice.

100. Plaintiffs require and request a declaration, pursuant to 28 U.S.C. § 2201, that pursuant to 5 U.S.C. § 701 *et seq.*, the complained of actions of the Federal Defendants are arbitrary, capricious, an abuse of discretion, and not in accordance with law.

THIRD CAUSE OF ACTION
(Against the Cherokee Defendants)

101. Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1 - 100 as if set forth fully herein.

102. The Cherokee Defendants' acts violate, without limitation, the United States Constitution, the Act of 1970, the Cherokee Constitution, the Treaty Between the United States and the Cherokee Indians, March 21, 1866, 14 Stat. 755, and the Indian Civil Rights Act, 25 U.S.C. §§ 1301, *et seq.*

103. By reason of the foregoing, a ripe and justiciable controversy exists, and Plaintiffs have standing to assert their rights.

FOURTH CAUSE OF ACTION
(Equal Protection)
(Against the Federal Defendants)

104. Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1 - 103 as if set forth fully herein.

105. The denial of entitlement benefits deriving from the funds distributed by the United States to the CNO is a denial of equal protection of the laws and thus deprives the Cherokee Freedmen of due process of law in violation of the Fifth Amendment of the Constitution of the United States. There is no legitimate reason for the denial of benefits deriving from the funds distributed by the United States to the CNO. The BIA policy in this respect is irrational.

106. As a result of the foregoing, Plaintiffs are entitled to a declaratory judgment that Cherokee Freedmen are entitled to receive benefits deriving from the funds distributed by the United States to the CNO on the same basis as other members of the Cherokee Nation.

107. As a further result of the foregoing, Plaintiffs are entitled to an injunction compelling the Federal Defendants to disapprove disbursements from the funds distributed by the United States to the CNO unless those disbursements benefit the Cherokee Freedmen on the same terms as they benefit all other members of the Cherokee Nation; and further, to condition any further release or payment of monies from the funds distributed by the United States to the CNO on the Cherokee Nation's compliance with said directive.

FIFTH CAUSE OF ACTION
(Review of Agency Action)
(Denial of CDIB Cards)
(Against the Federal Defendants)

108. Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1 – 107 as if set forth fully herein.

109. An actual controversy exists between the Plaintiffs and the Federal Defendants as to whether the Cherokee Freedmen are entitled to receive CDIB Cards.

110. Plaintiffs have exhausted their administrative remedies, and all BIA action in this respect is final. Alternatively, Plaintiffs are not required to exhaust any purported administrative remedies or to demonstrate final agency action because pursuit of such remedies would be futile, because Plaintiffs' Constitutional rights are being violated, because the issue to be decided is a purely legal one, and because irreparable harm would otherwise ensue.

111. The BIA policy of refusing to provide Cherokee Freedmen with CDIB Cards is arbitrary and capricious, contrary to law, in violation of the BIA's own regulations, and unconstitutionally discriminatory.

112. Plaintiffs are entitled to a declaration that the Cherokee Freedmen are entitled to receive CDIB Cards.

113. As a further result of the foregoing, Plaintiffs are entitled to an injunction compelling the Federal Defendants to accept and approve each application for a CDIB card submitted by a Cherokee Freedmen who can trace his or her ancestry to an individual listed on the Dawes Rolls.

SIXTH CAUSE OF ACTION
(Equal Protection)
(Denial of CDIB Cards)
(Against the Federal Defendants)

114. Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1 – 113 as if set forth fully herein.

115. Denial of CDIB Cards to the Cherokee Freedmen is a denial of equal protection of the laws and thus deprives the Cherokee Freedmen of due process of law in violation of the Fifth Amendment of the Constitution of the United States. There is no legitimate reason for the denial of CDIB Cards to the Cherokee Freedmen. The BIA's policy in this respect is irrational

116. As a result of the foregoing, Plaintiffs are entitled to a declaration that Cherokee Freedmen are entitled to receive CDIB Cards.

117. As a further result of the foregoing, Plaintiffs are entitled to an injunction compelling the Federal Defendants to accept and approve each application for a CDIB card submitted by a Cherokee Freedmen.

118. As a result of the foregoing, Plaintiffs are entitled to declaratory and injunctive relief to preserve their rights as members of the Cherokee Nation.

WHEREFORE, Plaintiffs respectfully pray for judgment granting declaratory and injunctive relief as follows:

119. Declaring that the United States government, in its capacity as fiduciary and trustee, may not approve any election or other act by the Cherokee Nation in derogation of the rights of its Freedmen citizens.

120. Enjoining Defendants and the BIA from recognizing the 2003 Elections until such time as a lawful election that includes all citizens of the Nation.

121. Enjoining the Federal Defendants from recognizing the actions of the Cherokee Nation until such time that it is constituted with Freedmen representatives, operates under a Constitution that has been ratified by Freedmen citizens and all Freedmen entitled to citizenship and the right to vote are granted the same ability to do so as other Cherokee citizens.

122. Directing the BIA to not recognize the Cherokee Nation government until it is lawfully constituted in compliance with the Treaty of 1866.

123. Directing the BIA to appoint a Trustee to ensure the civil rights of the Freedmen are not violated in the future.

124. Enjoining the CNO from recognizing the Election results of the 2003 Elections until such time as a lawful election that includes all citizens of the Nation.

125. Enjoining the CNO from implementing any law recognizing the results of the March 3, 2007, election or implementing any law that denies citizenship rights of the Freedmen.

126. Enjoining the CNO from recognizing the Election results of the 2003 Elections or constitutional amendment election or implementing the results of that election, until such time as a lawful election that includes all citizens of the Nation, including the Freedmen.

127. Enjoining the CNO from recognizing the Election results of the June 23, 2007, Election or implementing the results of that election, until such time as Freedmen are permitted to run for office in compliance with the Treaty of 1866 or vote on ratification of the 1999 Constitution.

128. Enjoining the CNO and Chadwick Smith, individually, from holding further elections without a vote of all citizens, including the Freedmen.

129. Enjoining the CNO from taking any further actions to disenfranchise or otherwise strip the citizenship rights of the Freedmen.

130. Awarding Plaintiffs their reasonable attorneys fees, costs, and disbursements from the parties, including but not limited to recovery of fees and costs from the United States pursuant to the Equal Access to Justice Act.

131. Awarding such other relief as accords with Plaintiffs' causes of action herein and as the Court deems just and proper.

Dated: July 17, 2007

Respectfully Submitted,

/s/ Alvin Dunn

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