

Congress of the United States
Washington, DC 20515

May 7, 2009

The Honorable Eric Holder
Attorney General
U.S. Department Of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Re: Tribal Citizenship Concerns for the Cherokee, Chickasaw, Choctaw,
Muscogee (Creek) and Seminole Indian nations

Dear Attorney General Holder:

We understand that several Members of Congress recently sent you a letter requesting that the Department of Justice investigate the Cherokee, Chickasaw, Choctaw, Muscogee (Creek), and Seminole Indian nations for alleged civil rights violations. As Members of Congress representing districts where each of these tribes resides, we are very familiar with the history underlying this request by these Members and oppose it strongly.

Last year, Congress reached an understanding during its consideration of the Native American Housing Assistance and Self Determination Act, H.R. 2786, to allow the current judicial proceedings to be completed, with regard to the Cherokee Freedman, before any Congressional action would be taken. This new letter of request from Congressional Members, some of whom directly participated in achieving that compromise, violates the spirit of those negotiations, and is a direct affront to tribal sovereignty and the rights of all parties to argue their positions in court. We ask that you instead honor President Obama's stated position on this issue that Congress should not intervene in the matter, and instead allow the courts to settle disputes between the Freedmen and the related tribe.

As you know, at the heart of the Members' request is the issue over whether certain descendants of slaves held by members of these Indian nations over 140 years ago are entitled to citizenship in these Nations. This is both an issue inherent to tribal sovereignty and, as a legal matter, one that is governed by treaties between these nations and the United States as well as subsequent congressional legislation. Consequently, we urge you to reject the request for an investigation for a number of reasons.

Clearly, this is not an issue that should be decided by Congress or the Administration. The federal court system is given jurisdiction over treaty violations by Article III, Section 2 of the U.S. Constitution. Throughout United States history tribes have often received judgment over treaty violations in the court system and it would be blatantly unconstitutional to investigate the supposed treaty violation without a judgment by the federal courts. Additionally, Congress has a lengthy history of breaking treaties with Native Americans and it was the Executive branch that overruled the courts and authorized the removal of the Cherokees to Oklahoma.

The decision on the Cherokee Freedmen's citizenship rights is currently awaiting a determination by the federal court system. As you know, the Department of Justice is already party to two different federal lawsuits (one in the Northern District of Oklahoma and one in the District of Columbia) trying to determine whether certain descendants of Cherokee Freedmen are entitled to tribal citizenship. In addition, the issue is also now before that nation's tribal court. To say the least, it would be premature for the Department of Justice to investigate an alleged violation of a right when the tribal and federal courts are still in the process of determining if such right exists as claimed. It is important to note, however, that the Cherokee have reinstated the Freedmen with citizenship while the case is pending in court.

President Obama himself, during his election campaign, strongly supported the continued importance of tribal sovereignty. Specifically, with respect to the Cherokee Nation he stated, "As it stands, the rights of the Cherokee Freedmen are not being abrogated because there is an injunction in place that ensures the Freedmen's rights to programs during the pendency of the litigation....I do not support efforts to undermine these legal processes and impose a congressional solution. Tribes have a right to be self-governing and we need to respect that, even if we disagree, which I do in this case." Initiating any such investigation would constitute a staunch contradiction to President Obama's stated position.

Furthermore, it is equally troubling that an additional four tribes have been brought into this controversy. Only the Cherokee Nation currently has litigation pending on this matter. Each individual tribe has their own unique historical experience with slavery, treaty with the federal government, and specific citizenship policy. To entangle the Choctaw, Chickasaw, Seminole and Muscogee (Creek) Nations into this would cause tribes who do not currently have unresolved cases pending before the courts to incur thousands of dollars in legal expenses.

Please also note that before any investigation into Indian-nation citizenship issues would begin, the Department of Justice would first strongly have to consider the critical importance of tribal sovereignty, particularly when it comes to such inherently internal matters as tribal citizenship. While the Members who have requested such an investigation have shown a lack of respect for the sovereignty of an Indian nation, the United States government has a fiduciary duty to do so, which strongly mitigates against any such investigation.

We would welcome the opportunity to meet with you on this subject. While we take no position on the ultimate resolution of the legal question before the courts, we firmly stand behind the right of Indian nations to have their case fairly decided in the judicial system, as ordered by the U.S. Constitution. We are confident that any Indian nation would adhere to a final federal court ruling, regardless of its outcome. Thank you for your consideration of these matters.

Respectfully yours,



Dan Boren
Member of Congress



Tom Cole
Member of Congress