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GENERAL MEMORANDUM 09-068

Justice Department Asked to Investigate Five Tribes in Freedman Dispute

On April 30, 2009, a number of senior black lawmakers wrote a letter to Attorney General Eric Holder asking that the Department of Justice investigate alleged violations of the "civil and voting rights" of African-American "Freedmen" by the Cherokee Nation of Oklahoma, the Seminole Nation of Oklahoma, the Chickasaw Nation, the Choctaw Nation of Oklahoma, and the Muscogee (Creek) Nation ("Five Tribes").

The Freedmen are descendents of black slaves who lived among the Five Tribes on tribally-owned lands in Indian Territory (now Oklahoma). Some Freedmen lived on tribal lands before and during the Civil War – and some migrated to Indian Territory and settled there following the Civil War. In recent years, their status has been the subject of ongoing litigation and political activity. *See* our GM 07-090 (Legislation Introduced to Terminate the Cherokee Nation), GM 08-068 (Update on Cherokee Nation Freedmen Controversy), GM 08-096 (D.C. Circuit Issues Ruling in Cherokee Freedmen Case), and GM 08-116 (Congress Approves Housing Bill Addressing the Cherokee Nation Freedmen Controversy).

The letter to Attorney General Holder was signed by Representative Diane Watson, House Judiciary Committee Chairman John Conyers (D-MI), House Financial Services Committee Chairman Barney Frank (D-MA), Congressional Black Caucus Chairwoman Barbara Lee (D-CA), House Senior Deputy Whip and Chairman of the House Ways and Means Subcommittee on Oversight John Lewis (D-GA), and House Homeland Security Subcommittee on Transportation Security Chairwoman Sheila Jackson Lee. All, except Chairman Frank, are members of the Congressional Black Caucus.

The letter, which requests that the Justice Department's Civil Rights Division launch "a full-scale investigation," claims that a combination of treaties, statutes, case law, and the 13th Amendment provide the Freedmen with tribal citizenship rights, and that the United States has a fiduciary responsibility to protect them. The letter, which does not mention the well-documented history of federal treaty violations and the severe legislative and administrative treatment suffered by the Five Tribes and their members for more than a century, accuses the Five Tribes of abrogating treaty rights with respect to the Freedmen. This is particularly ironic since, in 1904, Congress chose to completely remove federal statutory protections from Freedmen allotments – allotments of tribally-owned lands that were deeded to them by the Principal Chiefs of the Five Tribes – before proceeding to enact a series of federal laws that systematically weakened protections of lands of Indian Five Tribes members, ultimately resulting in protections of only those allotted and inherited lands owned by persons of half or more *Indian* blood.

This federal system of federal protections based on degree of Indian blood is unique to members of the Five Tribes, but federal recognition of the right of tribes to determine their own membership is not unique. The Five Tribes have taken the position that they simply want to restrict their membership to Indian blood descendants, as is the case for most, if not all, other Indian tribes nationwide.

There are two pending federal cases – the on-going *Vann v. Salazar* litigation in the District of Columbia filed by the Freedmen over their exclusion, and the *Cherokee Nation v. Nash* case which was filed in the Northern District of Oklahoma on February 3rd of this year against five Freedmen and the United States Department of the Interior. Concessions in the last Congress from members of the Congressional Black Caucus on Cherokee legislation indicated that they were willing to let litigation run its course. The recent letter now indicates that the Congressional Black Caucus has changed that position, although it is not clear what type of results they seek from an investigation by the Department of Justice.

After the release of the letter, Representatives Tom Cole (R-OK) and Dan Boren (D-OK) announced that they would ask the Attorney General not to proceed with an investigation. According to the Washington Post, “Justice Department spokesman Andrew Ames said the agency would 'review the letter to determine what action, if any, is appropriate.’” President Obama has nominated Tom Perez to head the Civil Rights Division but the Senate has yet to confirm him.

We will keep you updated on this matter as events warrant.

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