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NAHASDA REAUTHORIZATION: ADDRESSING HISTORIC DISINVESTMENT AND THE ONGOING PLIGHT OF THE FREEDMEN IN NATIVE AMERICAN COMMUNITIES

HYBRID HEARING

BEFORE THE

SUBCOMMITTEE ON HOUSING,
COMMUNITY DEVELOPMENT,
AND INSURANCE

OF THE

COMMITTEE ON FINANCIAL SERVICES

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NAHASDA REAUTHORIZATION: ADDRESSING HISTORIC DISINVESTMENT AND THE ONGOING PLIGHT OF THE FREEDMEN IN NATIVE AMERICAN COMMUNITIES

Tuesday, July 27, 2021

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON HOUSING,
COMMUNITY DEVELOPMENT,
AND INSURANCE,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 3:16 p.m., in room 2128, Rayburn House Office Building, Hon. Emanuel Cleaver [chairman of the subcommittee] presiding.

Members present: Representatives Cleaver, Vargas; Hill, Rose, Steil, and Taylor.

Ex officio present: Representative Waters.

Chairman CLEAVER. The Subcommittee on Housing, Community Development, and Insurance will come to order. Without objection, the Chair is authorized to declare a recess of the subcommittee at any time. Also, without objection, members of the full Financial Services Committee who are not members of this subcommittee are authorized to participate in the hearing today.

Today's hearing is entitled, "NAHASDA Reauthorization: Addressing Historic Disinvestment and the Ongoing Plight of the Freedmen in Native American Communities." I now recognize myself for 3 minutes for an opening statement.

The treatment of the original inhabitants of the North American continent has been a stain on the history of our great nation. The establishment and expansion of the United States included the seizure and forced removal of Native Americans from their homes, particularly under Andrew Jackson's Indian Removal Act.

Subsequent legislation continued to oppress and limit the mobility of Native Americans. The United States signed more than 370 treaties, passed laws, and instituted policies that have come to define the special government-to-government relationship between the Federal and Tribal Governments, and obligates the Federal Government to promote the general well-being of Native American Tribes. Yet, the United States has failed to provide that assistance.

Native American communities continue to experience disproportionately high poverty rates and low incomes, overcrowding, chronic homelessness, and a lack of basic utilities such as plumbing,

clean drinking water, and heat, and face barriers to housing and community development.

In 1996, Congress passed the Native American Housing Assistance and Self-Determination Act (NAHASDA), which provides Federal funding to Tribal areas via the Indian Housing Block Grant (IHBG) Program. That program is intended to support safe, decent, and affordable housing in Tribal areas while respecting Tribal sovereignty.

Today's hearing is focused on the need to reauthorize NAHASDA, which is the central statutory framework through which the Federal Government helps Tribal Governments improve housing and other infrastructure.

We are also here today to understand the history of the Black Native American Freedmen. If you are not familiar with this particular history, then I encourage you to take a good look, and to listen to this hearing today.

Also, we are going to look at how certain Tribes, including Cherokee, Choctaw, Chickasaw, Muscogee (Creek), and Seminole Nations, known as the Five Tribes, who purchased and enslaved people from Africa, signed a treaty agreement and abolished slavery by freeing any insulated individuals, and agreed to treat them and their lineal descendants equal to Native citizens.

Today's hearing will discuss this turbulent history, and how Congress may be used to ensure that all federally-recognized Tribes will receive the support and flexibility to make local decisions in how they serve low-income families.

The Chair now recognizes the ranking member of the subcommittee, Mr. Hill, for an opening statement.

Mr. HILL. I thank the chairman. I thank you for holding this hearing today. And I thank our panelists for being with us today. We are here to talk about the Native American Housing Assistance and Self-Determination Act, that we refer to as NAHASDA.

In many ways, this hearing is long overdue, and there is much to discuss. In fact, other than a 2017 field hearing in Wisconsin, held by then-Chairman Sean Duffy, this subcommittee has not even had a hearing on NAHASDA in 14 years, going all the way back to June of 2007.

Moreover, while NAHASDA has been amended several times since it was enacted, it has only been reauthorized twice, once in 2002, and once in 2008, and the program is currently receiving appropriations from Congress without authorization. That passive level of oversight bordering on apathy is no way to run our government or to administer this program.

But it is even more devastating, given the extreme level of present need for too many of our 570 federally-recognized American Indian and Alaska Native Tribes. It almost defies belief to witness the persistent pockets of poverty on Tribal lands. According to a Brookings Institution report from 2019, child poverty rates among American Indians and Alaska Natives have consistently exceeded 40 percent for the past 30 years. That is unacceptable to me, and I know it is to our Chair, and to all of the participants on our panel today, and we have to figure out a more effective way to combat it.

While there are many technical questions to discuss here, I think it is important that we ask some bigger questions in order to get to the heart of the matter of these reforms, such as, has NAHASDA been successful in accomplishing its objective? How can the Tribes better leverage private capital to enhance their economic development opportunities? How can we better increase accountability for the use of NAHASDA funds, while maintaining the core principle of Tribal self-determination? After all, the worst thing anyone could take away from this hearing today is the notion that if we just enact a new NAHASDA reauthorization, all of the myriad problems and complexities in Indian country will simply go away. I wish that were the case, but life is never that simple.

Still, anything worth doing is worth doing well, and good Federal policy that leads to quality economic development, and with hard work and diligence, economic prosperity for our brothers and sisters on Tribal lands is certainly worth our time and effort.

Which brings me to another point about a certain level of inescapable irony here. Just a week ago, we had the HUD Secretary, Secretary Fudge, sitting in this very room, proclaiming that she had no idea how much COVID emergency rental assistance money had been approved by Congress last year and had gotten into the hands of distressed tenants. That quote came nearly 6 weeks after I wrote Secretary Fudge a letter, with my colleague from Illinois, Rodney Davis, and asked her, in June, why HUD had still not spent the CARES Act money from 16 months ago, a letter to which she has not yet responded.

Such a level of irresponsibility and disengagement is the last thing the American people want to hear right now. And now, one week later, we are here talking about giving HUD more Tribal rental assistance funding and expecting them to produce better and more productive results.

Last week, some of our colleagues on the other side of the aisle seemed willing to let accountability slip. Well, you can rest assured that on this side of the aisle, we do intend to hold HUD and others in the government accountable on their COVID emergency spending and on making sure that every dollar authorized for NAHASDA ends up going to a worthy cause without any unnecessary delay.

Our citizens who rely on programs like NAHASDA deserve that level of accountability from Washington, and our job at this hearing and in oversight is to ensure that every promise we make is a promise that the U.S. Government will keep.

I thank the chairman, and I yield back.

Chairman CLEAVER. Thank you. The Chair now recognizes the Chair of the full Committee on Financial Services, the gentlewoman from California, Chairwoman Waters.

Chairwoman WATERS. Thank you, Chairman Cleaver, for convening this important hearing. Unequal access to housing sits at the heart of many racial and economic injustices across the country, including among Native American communities. The legacy of land and cultural dispossession has contributed to Native people experiencing, of course, high levels of chronic homelessness, overcrowding, and poor housing conditions.

We also know that a key determinant of housing access on reservations is Tribal citizenship, which is one of the barriers faced by

descendants of Black Native American Freedmen today. Many remain unaware of the ongoing plight of the descendants of Freedmen, whose ancestors were held as enslaved people by five slaveholding Tribes, including the Cherokee, Choctaw, Chickasaw, Muscogee (Creek), and Seminole.

Today, under their 1866 treaty agreement with the United States Government, these Tribes must recognize descendants of Freedmen as Tribal citizens and guarantee equal access to Federal housing resources. While many confuse this issue with Tribal sovereignty, I want to be clear that this is not a Tribal sovereignty issue. Rather, it is about honoring the treaty rights promised to the Freedmen and their descendants all those centuries ago.

While it took decades of litigation, I am pleased that Chief Hoskin is leading the Cherokee Nation to honor the rights of Cherokee Freedmen. And other Tribes must follow suit.

Today, we are considering my legislation to address Native housing needs by reauthorizing NAHASDA programs and guaranteeing equal access for all Tribal citizens, including the descendants of Freedmen.

So, I want to thank our witnesses for their testimony. This is a fight that is about fairness and equality. For one minority group to discriminate against another minority group cannot stand. And as the Chair of the Financial Services Committee, I do not intend for it to stand.

I yield back my time.

Chairman CLEAVER. The gentlewoman yields back.

Today, we welcome the testimony of our distinguished panel: Mr. Chuck Hoskin, Principal Chief of the Cherokee Nation; Mr. Chris Kolerok, Director of Public Policy and Government Affairs with the Cook Inlet Housing Authority; Ms. Marilyn Vann, President of the Descendants of Freedmen of the Five Civilized Tribes Association; Mr. Anthony Walters, Executive Director of the National American Indian Housing Council; and Mr. Jackson Brossy, Executive Director of the Native CDFI Network. Thank you all for being here.

Witnesses are reminded that their oral testimony will be limited to 5 minutes. You should be able to see a timer on the desk in front of you that will indicate how much time you have left. When you have 1 minute remaining, a yellow light will appear, and I may tap very gently to remind you that your time is approaching its end. I would also ask that you be mindful of the timer, and when the red light appears, to quickly wrap up.

And without objection, your written statements will be made a part of the record.

Chief Hoskin, you are now recognized for 5 minutes to give an oral presentation of your testimony.

STATEMENT OF THE HONORABLE CHUCK HOSKIN, JR., PRINCIPAL CHIEF, CHEROKEE NATION

Mr. HOSKIN. "Osiyo," which means, "hello," in Cherokee, Mr. Chairman, Ranking Member Hill, Chairwoman Waters, and distinguished members of the subcommittee. I am Chuck Hoskin, Jr., Principal Chief of the Cherokee Nation. I appreciate the opportunity to speak with you today.

Supreme Court Justice Hugo Black once wrote that, "Great Nations, like great men, should keep their promises." I want to share a few words with you about Cherokee Nation's work to meet a promise that our Nation made to the Cherokee Freedmen and their descendants in the Treaty of 1866. That treaty is a living, powerful, and foundational document, Mr. Chairman, that ties together all of the Cherokee Nation treaties that existed before it.

When we speak of our most important treaty rights, from our reservation lands to our right to a delegate to the House of Representatives, what we are really pointing to is language in the Treaty of 1866 which says that all provisions of treaties heretofore ratified and enforced are hereby reaffirmed and declared to be in full force. It is a document that we, as Cherokees, must defend and preserve.

Article 9 of the Treaty, Mr. Chairman, states that, "All Freedmen and their descendants shall have all of the rights of Native Cherokees,"—not some of the rights, Mr. Chairman, but all of the rights of Native Cherokees. And we criticize the United States when it fails to live up to its treaty obligations, yet we have the same responsibility.

For Cherokee Nation, the issue of Freedmen citizenship was really settled 155 years ago, in the treaty that we agreed to, that the Senate ratified, and that the President of the United States signed. It was settled, Mr. Chairman, by our ancestors. Now, we talk a great deal in Cherokee culture about respecting our ancestors, and seeking guidance from them. Well, they were clear, in 1866. They agreed, by treaty, to forever cede the right to exclude Freedmen and their descendants. Because of this, some of the actions taken by some of my predecessors to exclude Freedmen were void ab initio, that is, Mr. Chairman, void from the beginning. Quite simply, Cherokee Nation has not possessed the ability, since 1866, to deny full citizenship to Freedmen.

The enslavement of other human beings, and the subsequent denial to them and their descendants of basic rights, is a stain on the Cherokee Nation, and it is a stain that must be lifted. I offer both an apology on behalf of the Cherokee Nation for these actions, and more importantly, Mr. Chairman, I offer a commitment to reconciliation.

I am proud of the actions that we have taken over the last decade to begin to right these wrongs. We did not appeal the Federal District Court decision in the *Nash* case, which confirmed that the 1866 treaty is alive and well and preserves the rights of Freedmen to have all of the rights of Native Cherokees. The day after that historic decision in 2017, our own Cherokee Nation Supreme Court affirmed that same principle. The *Nash* decision is the law of the land in the Cherokee Nation. We immediately began processing applications for citizenship of Freedmen descendants, and to this day, and on an ongoing basis, 8,500 applications for citizenship have been processed.

Earlier this year, our supreme court determined that the, "by blood," language in our constitution was also in violation of the Treaty of 1866, and that that language was void also from its inception. Interior Secretary Haaland recently recognized that the Cherokee Nation had brought the longstanding issue of Freedmen

citizenship to a close and fulfilled our obligations, when she approved our constitution.

But, Mr. Chairman, we know we must do more than just acknowledge the legal principle of equality. We have to embrace the spirit of equality every day. And we know it does not happen overnight. For more than a century, Freedmen have been disconnected from the Cherokee Nation. They have not had the same experience as Cherokee citizens. We have to bridge that gap. So to that end, I issued an executive order on November 7th of last year on equality, to reaffirm equality in the Cherokee Nation, to knock down barriers to access to services and programs if they exist.

We have also undertaken an effort to recognize and celebrate Freedmen history and Freedmen art, so that we can celebrate our full history in the Cherokee Nation.

I want to close by saying that the reason I am here today is because it is a moral imperative that I be here, and that the Cherokee Nation recognize equality. I am not here because of the 2008 NAHASDA rider that addressed the Freedmen issue. We took these actions because it was the right thing to do.

I do not believe Congress should condition Federal housing policy and dollars on this type of public policy end. I think it breeds antipathy. I don't think it breeds understanding. But I will say this, Mr. Chairman, the Cherokee Nation is a better nation, and a stronger nation for having kept its promise with respect to equality for Freedmen.

"Wado," which means, "thank you," in Cherokee.

[The prepared statement of Chief Hoskin can be found on page 32 of the appendix.]

Chairman CLEAVER. Thank you, Chief Hoskin. Mr. Walters, you are now recognized for 5 minutes.

STATEMENT OF ANTHONY WALTERS, EXECUTIVE DIRECTOR, NATIONAL AMERICAN INDIAN HOUSING COUNCIL (NAIHC)

Mr. WALTERS. Thank you, and good afternoon. I would like to thank Chairman Cleaver, Ranking Member Hill, Chairwoman Maxine Waters, and the members of the subcommittee for holding this hearing today and for inviting NAIHC to provide testimony regarding NAHASDA.

The committee uses the term, "historic disinvestment," to describe the state of Tribal housing programs, and this is all too accurate. In Fiscal Year 1998, the first year of NAHASDA, Tribes received $600 million. In Fiscal Year 2021, Tribes received only $650 million for the same block grant. Factoring in inflation, this small increase actually represents a cut of over one-third of the purchasing power of Tribal housing programs. If the program had kept pace with inflation, the Indian Housing Block Grant today should equal $994 million. In these same 20 years, the HUD budget has almost doubled.

Despite the funding shortfall, Tribes support NAHASDA and have been successful through the program. According to HUD, since NAHASDA was created, Tribes have built over 40,000 affordable housing units and rehabilitated over 100,000 more. Unfortunately, and also according to HUD, 68,000 units today are needed in Tribal communities to address substandard homes and to allevi-

ated overcrowded conditions, which Native homes experience at nearly 8 times the national average.

You may ask what Tribes are doing with the block grant funds they currently receive. We ask Tribes to do a lot with that funding. Tribes are tasked with maintaining tens of thousands of tribally-owned housing units across the country that have been developed over decades and which are now aging and in need of constant repairs. Tribe are also asked to provide low-income rental assistance, as well as to provide student housing assistance, housing and supportive services for veterans and elders, housing counseling services for prospective home buyers, and paying the operating costs for their own housing programs, and we also expect them to build new homes each year.

Nearly 600 Tribes receive funds through NAHASDA, and they are expected to carry out all of these services with only $650 million in the block grant. Approximately 400, or two-thirds of those Tribes, receive less than $500,000 a year to do all of these activities, and 175 of these grantees receive less than $100,000 to do these housing activities. So, it shouldn't be hard to see why we are falling behind.

The United States Commission on Civil Rights issued a report in 2018 entitled, "Broken Promises," just 3 years ago, which found that since 2003, when the Commission on Civil Rights first reported on the housing crisis in Indian country, the situation had deteriorated further. The report stated that according to HUD, between 2003 and 2015, the number of overcrowded households without adequate kitchen or plumbing grew by 20 percent, from 90,000 households to 110,000 households. The number of families with severe housing costs grew by 55 percent, to 65,000 families. That is all in this century. That is just in these past 20 years that we are letting things get worse in our Tribal communities.

But we can change that. This Congress can change that. Let's celebrate the 25th anniversary of NAHASDA this year by recommitting ourselves to fully supporting housing development in Indian country. NAIHC stands ready to work with any and every Member of Congress to address these housing issues.

The current draft of the NAHASDA bill has a lot of great pieces. It contains some program improvements that Tribes have been asking for, for years. It includes proposals that will make housing development easier, including simplifying environmental reviews for housing, and relaxing flood insurance program requirements that would place Tribes on the same footing as States. It would make the HUD-VASH program for Tribal veterans permanent and open to all Tribal communities. Currently, the program only serves veterans in 27 of the 574 Tribes. The bill would also create substantial set-asides for USDA programs that seem like a perfect fit for Tribal communities that have historically had little impact.

One area where the current draft falls short is the authorization levels. While NAIHC supports reauthorization, the draft bill would cap authorizations for the next 5 years, starting at current funding levels. This would essentially mean that Tribes will always be capped at two-thirds of the purchasing power that they originally negotiated for through NAHASDA.

NAIHC, as a Tribal membership organization, also believes that provisions like Section 604, that target individual Tribes, should be discouraged from a larger housing bill without that Tribe's support. For the particular issue of the hearing today, it is also considered a membership issue by NAIHC, and thus should be treated as such and not directed into a housing program reauthorization.

Prior to NAHASDA, Tribes were piecing their housing programs together with various grants and funding sources. Despite the original promise of the consolidated block grant, 25 years later Tribes are again piecing their housing programs together. While Tribes can and are leveraging resources from various Federal programs, it is not easy. Tribes are often confronted with a multitude of differing eligibility requirements, environmental views, and program rules.

So what can we do, and what can Congress do? To end my comments, we can keep improving NAHASDA. We can reauthorize NAHASDA, and we can keep ensuring that national housing programs are also effective in Indian country. And we have to reverse the historic disinvestment and call on Congress, Federal agencies, Tribes, and the private sector to act. We must recognize that housing development in Tribal communities will rarely have the economies of scale that drive housing development in other areas, and we have to invest anyway, because it is needed in our Tribal communities and because it is a promise that the United States made to Tribal nations.

With that, I will end my statement. NAIHC has submitted additional comments for the record. I look forward to answering any questions you may have. Thank you again for your support in improving housing opportunities for Tribal communities across the United States.

[The prepared statement of Mr. Walters can be found on page 53 of the appendix.]

Chairman CLEAVER. Thank you, Mr. Walters.

Ms. Vann, you are now recognized for 5 minutes to give an oral presentation.

STATEMENT OF MARILYN VANN, PRESIDENT, DESCENDANTS OF FREEDMEN OF THE FIVE CIVILIZED TRIBES ASSOCIATION

Ms. VANN. Greetings, Chairman Cleaver, Ranking Member Hill, and members of the House Financial Services Committee. I am Marilyn Vann, President of the Descendants of Freedmen of the Five Civilized Tribes Association. I am a member of the Cherokee Nation of Freedmen Descendants. The organization supports enforcement of 1866 treaty rights of descendants of Freedmen who face discrimination in Tribal registration, and accessing federally-funded services.

I want to thank the subcommittee for holding this hearing, and I want to thank Chairwoman Waters and her staff for support of the Freedmen in NAHASDA. Today, I request that the members support Title VI, Section 604, the compliance section in the final NAHASDA bill that is adopted by Congress. If adopted as written, the Secretary of HUD would be authorized to reduce or withhold NAHASDA for one of more of the five Tribes if such Tribe is found to be in violation of its 1866 treaty obligations to Freedmen de-

scendants who were registered on the Dawes Rolls. I point out that none of these received degrees of blood. The rolls were approved by Congress in 1907. Currently, only the Cherokee Nation works to fulfill its treaty obligations to Freedmen descendants.

Almost all of the Freedmen were Black slaves of Tribal members. Prior to the Civil War, the Tribes allied with the confederate States to protect slavery, and at the end of the Civil War, signed new treaties with the United States. These treated granted the Cherokee and Seminole Freedmen and their descendants the right to Native Indian citizenship.

Many of the descendants of Freedmen today are impoverished and in need of housing, through no fault of their own. This began during slavery, when there were Black codes, slave codes. Blacks were barred from education and acquiring assets, later suffering race massacres like in Tulsa, Jim Crow laws, and redlining from the U.S. Government.

Starting in 1979, Tribal Nations passed laws to exclude Freedmen and/or treat Freedmen descendants as second-class citizens. Blacks in Oklahoma have lower homeownership rates and lower income than Native Americans, and both communities, less than Whites.

As a result of past and current systemic racism, descendants of Freedmen have substantial housing needs. Some of those in need of assistance include such Creek Freedmen descendants as Mr. Lovett of Okmulgee, a senior citizen on disability who needs rental assistance. He has had a double lung transplant. And Mrs. Wilson of Okmulgee, a widowed senior citizen who desperately needs a roof. She has a tarp on her roof, but needs housing repairs. And Ms. Rice of Okmulgee, a single mom who works a part-time job and is a student, and needs rental assistance that she tried to get from the Creek Nation, but was turned away.

Now, will the Tribes change without Federal intervention? History says no. Cherokee Nation only came into compliance after Federal court decisions in the *Cherokee Nation* v. *Nash*, and *Vann* v. *Zinke* cases, and passage of the Freedmen protective language in a 2008 NAHASDA Reauthorization Act, and at great personal cost to the Freedmen descendants and their allies. This nation spent millions to exclude Freedmen in the previous Administrations. Some councilpersons and candidates for office still oppose Freedmen citizenship. I appreciate former Chief Baker and Chief Hoskins for what they have done to honor the treaties.

Moving on to the Seminole Nation, they excluded Freedmen descendants from receiving services even after they lost the *Seminole Nation of Oklahoma* v. *Norton* case in 2001. They re-categorized the Freedmen as citizens rather than members, reissuing the Freedmen Tribal membership cards to say zero, zero blood quantum and voting privileges only, and they tell other Tribes that Freedmen do not qualify for services, in spite of the DOI and HUD instructing the Tribe that Freedmen descendants do qualify for services.

The Muscogee (Creek) Nation leadership stated that dialogue is needed about Freedmen but does nothing. The Tribe stresses validity of the 1866 treaty, Article 3, which confirms the Creek reserva-

tion [inaudible] Article 2 of the treaty, granting Freedmen the rights to share in national funds.

In conclusion, the Tribal Governments receive money for housing programs, but the majority of Freedmen are excluded. I ask you to include the treaty obligation language in the final bill and support its passage in the full House. Thank you.

[The prepared statement of Ms. Vann can be found on page 44 of the appendix.]

Chairman CLEAVER. Thank you.

Mr. Kolerok, you are now recognized for 5 minutes for your oral presentation.

STATEMENT OF CHRIS KOLEROK, DIRECTOR OF PUBLIC POLICY AND GOVERNMENT AFFAIRS, COOK INLET HOUSING AUTHORITY

Mr. KOLEROK. Chairman Cleaver, Ranking Member Hill, Chairwoman Waters, and members of the subcommittee, thank you for the opportunity to speak with you today. My name is Chris Kolerok. I am Cup'ik Eskimo, a member of the Native Village of Mekoryuk, and I am the Director of Public Policy at Cook Inlet Housing Authority, the tribally-designated housing entity for the Cook Inlet region of Alaska. I was unanimously voted as the Legislative Committee Chair of the Association of Alaska Housing Authorities, and unanimously voted as Board Member for the national American Indian Housing Council. My comments today represent all of the 14 regional housing authorities that cover every geographic corner and Native population group in Alaska.

I and my Alaskan colleagues thank Financial Services Committee Chairwoman Waters for her respect of Tribal self-determination and the goal of distributing funding without administrative burden or waste by allocating Indian housing funds through the NAHASDA formula in the Housing is Infrastructure Act of 2021.

Why do we need investments in Indian housing and the NAHASDA reauthorized? We do not have enough homes, and the homes we do have are often decrepit. Nationally, we need 33,000 new homes to alleviate overcrowding in Indian country today. The homes we do have are nearly 5 times as likely to have a physical deficiency as average, including lacking running water, or having electrical systems that are a fire hazard. Closer to home, in the Yukon-Kuskokwim region of Alaska, 40 percent of homes are either overcrowded or severely overcrowded, and 35 percent lack complete plumbing.

What does this look like, and what does this actually mean? I have seen, with my own eyes, in Brevig Mission, Alaska, an 1,100-square-foot, 3-bedroom home, with 18 people living in it. With that many people, there are not enough bedrooms. There are not enough surfaces for everyone to sleep at the same time. Instead, they must sleep in shifts.

In the hope that their children will grow up with a better life, some people sleep the day shift so that their children can sleep at night and attend school in the morning. Those people will never wake up in the morning for a job. Their children cannot learn at school if their home is too overcrowded to sleep or they carry the

stress from that overcrowded home into school. Those children will face difficulty in getting a job forever if they cannot read, write, or do basic math. When 18 people share a home, and one person suffers from a substance abuse disorder, 17 other people also suffer from that affliction.

There was at least one, and usually multiple homes like this in every village I served when I was the President of the Bering Straits Regional Housing Authority in northwest Alaska.

How did we get here? It is an oversimplification, but true, that past Congresses and Presidents forgot about us. The Indian Housing Block Grant, 20 years ago, Fiscal Year 2001, was $640 million. Last year, it was $647 million. HUD's budget 20 years ago was $28 billion, and last year, it was $60 billion. There is a long-running inequity in the distribution of new funding to HUD. Beginning to address this inequity is difficult, but I thank this subcommittee for doing this work.

Second, there are no homeless people at 40 degrees below zero.

So, what do we do going forward? I respectfully request the House and Senate to reauthorize NAHASDA. I also support the funding mechanism for Indian housing in the Housing is Infrastructure Act. I thank Chairwoman Waters again for her recognition and respect for self-determination in this Act.

The NAHASDA formula works. It takes the many variables that quantify housing need and creates a single allocation that is noncompetitive and highly efficient to distribute. Self-determination is respected by the formula because it is a consensus model that was negotiated amongst all Tribes and HUD, representing the Federal Government.

In the 25 years before NAHASDA, the Cook Inlet Housing Authority was able to construct 267 housing units, and in the 25 years after, we have constructed over 1,500. Competitive programs that change from year to year, that Tribes cannot count on, may be effective at achieving certain short-term goals, but they do not, however, provide for long-term operation of affordable housing units, and they take us back to pre-NAHASDA days when we competed with each other and had Washington tell us what we needed.

I thank the subcommittee again for the opportunity to speak with you.

[The prepared statement of Mr. Kolerok can be found on page 38 of the appendix.]

Chairman CLEAVER. Thank you, Mr. Kolerok.

Mr. Brossy, you are now recognized for 5 minutes for an oral presentation.

STATEMENT OF JACKSON BROSSY, EXECUTIVE DIRECTOR, NATIVE CDFI NETWORK (NCN)

Mr. BROSSY. Chairman Cleaver, Ranking Member Hill, Chairwoman Waters, and members of the subcommittee, my name is Jackson Brossy and I am the executive director for the Native CDFI Network (NCN). We are the only national member organization of community development financial institutions (CDFIs) that serves Native communities across the country. I am also a member of the Navajo Nation, and the subject of this hearing is near and dear to my heart, so thank you.

At NCN, our member organization serves 27 different States. Our members provide access to capital for first-time homeowners, microentrepreneurs, consumers, and those who are often unable to get a conventional bank loan, and live in redlined areas across the country, and in Indian country, particularly.

Yes, Indian country has been, historically, and currently is still being redlined when it comes to access to capital and housing finance. Redlining and underinvestment in programs like NAHASDA and the CDFI Fund, and the lack of access to capital contribute to the situation where Natives currently live in substandard housing, as this panel has wonderfully and explicitly described. It is a situation where no more than 30 percent of members of the Navajo Nation have access to running water in their homes. It is a situation where there is severe overcrowding at a rate of 700 percent of what it is in the rest of the country. And this is unacceptable.

There are also problems with financial literacy, access to credit, and the prices that indigenous people pay when they finally do get access to a loan. The Federal Reserve recently found that Native Americans living on reservations who want to buy homes are significantly more likely to have high-priced mortgages, and those mortgages often are up to 2 percentage points more than non-Native Americans get in the same house. This means that a Native American family purchasing a house for $140,000 on a reservation could pay up to $100,000 more over the lifetime of a 30-year loan.

Problems of higher costs of homeownership and redlining in Indian country are unacceptable, and I am here to bring a solution to the table, and that solution is Native CDFIs. Native CDFIs across the country are doing our part to address the untenable situation, and we can use help and investment to make a greater impact on this problem. There are 69 Treasury-certified Native CDFIs across the country, and they provide access to capital to those who are unbanked and underbanked, with financial literacy and technical assistance. These Native CDFIs operate a wide spectrum of organizations and include tribally-sponsored CDFIs, like the Citizen Potawatomi Community Development Corporation of Oklahoma, and the majority of Native CDFIs, which are nonprofit loan funds, like the Native360 Loan Fund of Nebraska.

Native CDFIs can offer homeownership loans, down payment assistance, and home buyer training so that new homeowners have the tools to keep their home and build a solid foundation for their family.

Aligned with the spirit of NAHASDA, Native CDFIs are self-determination in action. They carry out the mission of NAHASDA and the CDFI Fund by increasing homeownership, and utilize both HUD opportunities such as the Section 184 Loan Guarantees, and HUD counseling, and other existing Federal programs such as the USDA Direct Loan Program, the Veterans Affairs Native American Direct Home Loan program, and the Federal Home Loan Bank System.

However, these tools can be improved upon, and we make some detailed recommendations in our written comments. But one area I wanted to bring up was coordination between the Department of the Interior and HUD around the slow turnaround for Title Status Reports. We also wanted to highlight a great program at the

USDA, called the USDA 502 Direct Program, that is really making a difference. In 2019, there were 6,194 direct loans made by this program. Of those 6,000 loans, only 2 of them were made on Tribal trust land. Thanks to a great pilot in South Dakota, Native CDFIs like the Four Bands community development are making a big difference, and we urge Congress to expand this pilot.

And to wrap things up, the pandemic has pulled back the veil around the challenge of inadequate and poor housing in Native communities. I urge Congress and this committee to build upon the focus of this hearing and support the spirit of self-determination in NAHASDA. It is time to provide the resources to fund housing efforts and to eliminate barriers to utilizing other existing housing tools. Native CDFIs stand ready to work and help in this progress, and I know that we commit fully to working with Congress to help alleviate this problem and making sure that Native people have fair access to housing.

Thank you.

[The prepared statement of Mr. Brossy can be found on page 28 of the appendix.]

Chairman CLEAVER. Thank you, Mr. Brossy, for your testimony. And I thank all of you for your testimony.

I now recognize myself for 5 minutes for questions.

Mr. Hoskin, I would like for you, if you would, to describe any efforts that the Cherokee Nation has made to ensure that your members can access affordable prime mortgages, and what is the Nation going to do to help its membership overcome such barriers as limited credit histories, and how can NAHASDA reauthorization help address these barriers?

Mr. HOSKIN. Thank you, Mr. Chairman. In Cherokee Nation, we are focused on building paths to homeownership. One way in which we do that is a mortgage assistance program, and we use some resources to help people with down payments.

But I think more important than that, we create an environment where they can get credit counseling, build their credit up as they need to, to access mortgages, including the HUD 184 program, which has been a successful program for Cherokee citizens. Those programs have proven successful so far, and as we go into our next fiscal year, we are determined to commit even more resources to those types of opportunities for homeownership.

At Cherokee Nation, we believe that everyone needs to have their housing needs addressed. There are different levels. For those who are on their way to homeownership or could be counseled in a way that could get them worthy of credit, we want to help them get to a mortgage, and the mortgage assistance program that we offer has been very successful.

Chairman CLEAVER. I am talking about prime mortgage financing.

Mr. HOSKIN. Through our prime mortgage financing, we do work with a number of banks in our region. We do have good relationships with our banks. There are barriers, certainly, but the mortgage assistance program does pair them with mortgages through banks, but we provide some cash assistance to help them with things like down payments and things of that nature, Mr. Chairman.

Chairman CLEAVER. We had the credit rating agencies here last week, I think it was, or the week before, I'm not sure. Is that a problem as well, the credit histories of those seeking prime mortgages?

Mr. HOSKIN. Certainly, it is. Certainly, those are barriers, and that is where our staff that works with citizens on counseling and identifying what has hit their credit history, that is where we address that. But certainly, it is a barrier to homeownership.

Chairman CLEAVER. I had questions for everybody, but I got into this. The credit history issue, are there alternative ways in which we could develop Tribal credit history? I know the system of measurement.

Mr. HOSKIN. That is an interesting concept, Mr. Chairman, and I think that it would be something to explore. There are some loans that we offer that are not, in fact, reported to the credit agencies, which is a double-edged sword. On the one hand, we can help some of our people get access to credit—I am not talking mortgages but access to credit—when they are in need of a non-predatory lender. But it also takes them out of building a credit history. So, we are sort of beholden to the credit history reports and exploring a way to expand that in Indian country would be of interest.

Chairman CLEAVER. Thank you.

Mr. Kolerok, are there some unique housing challenges that you face in Alaska that perhaps we would not normally even think about?

Mr. KOLEROK. Thank you, Mr. Chairman. When I think about housing in rural Alaska, I like to think about a community called Savoonga, which is 150 miles into the Bering Sea. It is closer to Russia than it is to the coast of Alaska. There are no roads to this island. And in this community, the ice only allows ocean transport from July through September.

So not just there, but if you think about, how do you build a home, and you think about the distance across Alaska, logistics is one of our biggest cost drivers, and logistics has risen in cost faster than the consumer price index. So as we talk about the difficulty of building homes now versus 20 years ago, we have to remember that the funding has stayed the same, but the cost of getting the material to an isolated, very small community, has gone up over 70 percent.

Chairman CLEAVER. Wow. My time is up. I now recognize the ranking member from Arkansas, Mr. Hill.

Mr. HILL. Thank you, Mr. Chairman. Again, I thank our panelists for a really good set of presentations.

Mr. Brossy, when we look at some of the many families who are living on Tribal landsz, we too often, as I said in my opening statement, see the staggering and persistent poverty. And I mentioned in my opening statement this 2019 Brookings Institution report which found that child poverty rates for the Tribes have consistently exceeded 40 percent over the past 30 years. That is a staggering number.

NAHASDA exists to help attack part of that problem on the housing side. I am interested in better understanding what can be done to fight Tribal poverty, more broadly. So since you represent the CDFIs working on Tribal lands, can you talk a little bit about

how Tribes are leveraging private capital for both jobs and other economic opportunity on Tribal lands?

Mr. BROSSY. Thank you for the question. I am going to take a step back and maybe address, how does the generational wealth transfer, and how do we set up our Native students and children for financial opportunity and growth moving forward? I think the Native CDFIs are helping with that. The Tribes obviously are doing a part of that, and that includes financial literacy, building up credit so that they are able to transfer wealth on to their next generation.

And when it comes to accessing financial markets, Tribes are doing great things. They are doing great things with Title VI of NAHASDA, and I think that is an area that our members are going to look more closely at; I think it is something that is underutilized.

But bringing it back to CDFIs, I do believe that the change that can happen in a generation from now is around financial literacy, credit building for young entrepreneurs and young consumers right now, that will impact generations and families moving forward.

Mr. HILL. Thanks. And going back to the housing issue, looking at this Section 184 Loan Guarantee Program, it seems that those programs are chronically undersubscribed. HUD says that the Title VI program has only generated about 100 loans, worth $252 million, over the whole history of the Act. And the Section 184 program has generated 46,000 loans over its history.

Can you talk to us about why these guarantee programs are not more active and what barriers currently exist to getting them used? You referenced Tribal lands and access to Tribal lands, so if you can mention in your answer if there are bureaucratic issues at the Bureau of Indian Affairs (BIA) on clearing land title, and just what are some of those barriers?

Mr. BROSSY. There are significant delays in the Department of the Interior and BIA turning around things called Title Status Reports.

Mr. HILL. What should be reasonable there?

Mr. BROSSY. They should be able to get something done in 30 days.

Mr. HILL. What is typical?

Mr. BROSSY. I don't know, but I have heard 6 months. Where deals fall apart, obviously the housing market is going up and valuations change.

Mr. HILL. Right.

Mr. BROSSY. And there also is an issue with coordination between the Departments of the Interior and Housing and Urban Development, and within this past year there was a brief stall of taking on Section 184 loans, and we think that is unacceptable. Also, in our comments, we say that there is an opportunity for Native CDFIs to be the lender right now. Many in the private sector, the large banks have backed out of doing the Section 184 loans. Native CDFIs are ready to step in, but we need to make—

Mr. HILL. And what is the key reason why the banks have stepped away from it?

Mr. BROSSY. I can't speak to that. You may need to bring somebody from the banks in. But I guess designing this type of program

for the market segment is cumbersome to the larger banks, and they are not able to take advantage of economies of scale, whereas Native CDFIs would serve our community and we would be able to do it right away.

Mr. HILL. You referenced the USDA 502 Direct Loan Program in your remarks, and you said that you were pleased with that pilot. Tell us more about that.

Mr. BROSSY. It is a great pilot in South Dakota. One of our members, the Four Bands Community Fund in Eagle Butte, South Dakota, has been able to create a pipeline of loans in rural development on Tribal trust land, which, going back to the issue of getting these Title Status Reports, has been really challenging and difficult. And like I said, the year before there were only 6 out of 6,000 of these direct loans that were made on Tribal trust land. Flipped on its head, in South Dakota, we want to see it expanded. There is a great bipartisan bill in the Senate. We would love your support and we would love the committee to move it forward.

Mr. HILL. Thank you, Mr. Brossy. And thank you, Mr. Chairman. I yield back.

Chairman CLEAVER. The Chair now yields to the Chair of the full Financial Services Committee, Chairwoman Waters.

Chairwoman WATERS. Today, we are here to discuss the chronic housing and community development needs of Native American communities and the reauthorization of Native housing programs. However, we must ensure that Federal funds are not used to perpetuate anti-Blackness and racial injustice.

Not many are familiar with the history of those who came to be known as the Freedmen. The Freedmen were Black individuals who were enslaved by five formerly slaveholding Tribal Nations. The Freedmen were forced to walk the Trial of Tears alongside their slave masters, and at the end of the Civil War were guaranteed full Tribal citizenship under treaty agreement between these formerly slaveholding Tribes and the United States Government in 1866. While Tribes like the Cherokee Nation have begun to make good on that promise, after decades of litigation, others have not. To this day, there are descendants of Native American Freedmen who are denied the full benefits of equal citizenship in certain Tribes based on their African ancestry.

First of all, I want to say thank you to Chuck Hoskin, Jr., Principal Chief of the Cherokee Nation. Chief Hoskin, I want to thank you for your wonderful presentation here today and the way that you described what is right and what is fair.

And I would hope that the other Tribes would follow suit, but my understanding is that they have no intentions of doing that. And once somebody said, "We will let this issue be settled in the court." Well, there are some that have even started to talk about going to the courts. They just don't do it, and they just don't want to do it.

And Ms. Vann, I would like to say thank you for never wavering on your fight for human dignity and equal recognition as a descendent of Freedmen, despite the complex layers of what it means to be both Black and Indigenous. I know that has not been easy. Your tireless efforts paid off when the Cherokee Nation finally began to recognize you and your fellow descendants of Freedmen as equal citizens of the Cherokee Nation.

However, the fight continues for many other Freedmen descendants of other Tribal Nations that continue to disenfranchise and marginalize them. Your organization represents descendants of Freedmen from all of these Tribes. Can you tell us about the ongoing struggle for those descendants of Freedmen who continue to be discriminated against despite treaty obligations that should protect them? Are they in need of housing? Are they in need of health care?

Or just as we are talking about reauthorization, and we are talking about how desperate it is for everybody, are the descendants desperate also? Do they need to share in these appropriations that they get from the Federal Government, with CDFI? Of course, we are responsible for CDFI funding right here in this committee, and we did a great job in giving COVID money to all of the Tribes. I will not go through the numbers.

Ms. Vann?

Ms. VANN. Greetings, Chairwoman Waters. Thank you, again. Yes, ma'am, the descendants of Freedmen people are in desperate need of housing as well as other programs. I really did not have time to get into the Choctaw and Chickasaw Freedmen, but yes ma'am, they also have great needs too. We have here two representatives of the Seminole Nation, the Freedmen bands. In the Seminole Nation, for instance, there are persons who have homes they can no longer afford to live in due to desperate poverty. Among the Freedmen people, you are talking about other services, medical services, within the pandemic, Freedmen not being able to get shots, and the Seminole Nation telling the Indian Health Service (IHS)—

Chairwoman WATERS. As I understand it—interrupting you just for a minute—the Seminole denied vaccination for COVID-19, despite the fact that we had given the money to all of the Tribes. Is that correct?

Ms. VANN. Yes, ma'am. They had told IHS, and gave them a list of people to not serve with vaccinations. And people died, including leaders of the Freedmen people. That is correct.

Chairwoman WATERS. I don't know what else to say.

Ms. VANN. Yes, ma'am.

Chairwoman WATERS. The case is very clear. I thank you, Mr. Chairman, for holding this hearing. It is so very important. But I want to tell you, this issue is not going to go away. I am going to work on this issue until we get the right thing done.

I yield back the balance of my time.

Chairman CLEAVER. I thank the gentlewoman from California for her prophetic comments.

The Chair now recognizes the gentleman from Tennessee, Mr. Rose.

Mr. ROSE. Thank you, Chairman Cleaver and Ranking Member Hill, for organizing this hearing, and thanks to our witnesses for your time here today.

As Congress considers reauthorizing NAHASDA, it is important to acknowledge which parts of the program have worked well. One of the core tenets of NAHASDA is the flexible nature of the block grant, which allows for self-determination by Tribes.

Could each of you on the panel discuss how the flexibilities included in this program have allowed Native communities to develop units, compared to the number developed when they received multiple single-use streams of funding from HUD?

Mr. Brossy, if you would start?

Mr. BROSSY. Taking a step back, the majority members of our organization are not tribally-designated housing entities, so most of ours do not directly receive the block grant. However, there are a few native CDFIs that are subsidiaries of a Tribal Designated Housing Entity (TDHE), and there is a great example in Alaska, the Tlingit and Haida. And they are able to work with the Treasury to create a program where they are able to provide financing for working-class members who might otherwise make too much money to participate in a lot of HUD programs, but still do not have the credit history to get a conventional loan. And so, they are able to find and finance that gap there. And I think that is also an area that a lot of folks on the panel might have some thoughts about.

Mr. ROSE. Sure. I will start with Mr. Walters, and work my way across the panel.

Mr. WALTERS. Sure. Thank you. You are right when you talk about the flexibilities provided under NAHASDA. Each Tribe is submitting their own Indian Housing Plan each year that addresses their unique community needs. Tribes are different, based on their geography, where they are across the country, how urban they are, how rural they are. So, giving the funds directly to Tribes through a consolidated block grant has worked wonders over the last 20 years.

In the beginning years of NAHASDA, they were outproducing the prior years under HUD funding and under HUD control of the housing programs. They were building more new homes under NAHASDA than before NAHASDA was enacted. That has gone down, due to the stagnant levels of NAHASDA funding. The Tribes have, overall, been very successful with NAHASDA, so they very much support the program and wish it to continue.

Mr. ROSE. And Chief Hoskin, would you like to address that?

Mr. HOSKIN. Certainly, briefly. The direct funding of NAHASDA and the ability to craft Indian Housing Plans has been indispensable for the Cherokee Nation. Indian country is not a monolith. You will find different needs on the Cherokee Nation than you will elsewhere, and our ability to craft those programs is important. So, we certainly support reauthorization and the flexibility that comes with it.

Mr. ROSE. Would any of the rest of you like to add anything there?

Ms. VANN. I will go ahead and add something here. I certainly believe that NAHASDA should be flexible. I believe in Tribal sovereignty, only that Tribes need to follow the law. But each Tribe, for instance, as earlier said—geography, the needs of the Tribes—in some places, there may be more rental assistance needed or such. And I agree with that flexibility, but not in issues, for instance, say it is blood quantum or those kinds of things that are used to determine the services for the members of the Tribe.

Mr. ROSE. Mr. Kolerok?

Mr. KOLEROK. The Cook Inlet Housing Authority, in the 25 years before NAHASDA, built 267 housing units, and in the 25 years after NAHASDA, has built over 1,500. NAHASDA put control of housing where it should be, which is in the hands of the Tribes. Prior to that, there were strict limits on housing costs, there were design standards, and that legacy is still visible today. Homes designed in California and shipped up whole are sitting, decaying and decrepit, in our Alaskan villages right now.

Unshackling us from HUD's mandates allowed us to get creative. The Cook Inlet Housing Authority was the first entity to mix NAHASDA funding with low-income housing tax credits. Getting away from the competitive nature of HUD's prior funding into the formula fund freed us from annual competition, and it allowed us to partner with our sister organizations in Alaska. For example, the AVCP Regional Housing Authority in southwest asked us to help them with their tax credits indication and modeling. We actually helped another organization develop tax credit property off the road system that would not have been possible when we were competing for every single dollar, in eight separate programs every year.

Mr. ROSE. Thank you, Mr. Chairman. I yield back.

Chairman CLEAVER. The gentleman yields back. The Chair now recognizes the gentleman from California, Mr. Vargas, for 5 minutes.

Mr. VARGAS. Mr. Chairman, thank you very much for allowing me to speak, and I appreciate all of the witnesses being here today. I do apologize that I missed a little bit of the testimony at the beginning, so some of my questions may be repetitive, and I apologize for that at the outset.

I do want to say that I am very thankful about the conversation that has been going with respect to how successful NAHASDA has been, the flexibility that it has provided for Indian Tribes. In fact, as was just stated by Mr. Kolerok, I think you said that it placed the—I don't want to put words in your mouth—I think you said it put the control of the housing where it should be, with the Indian Tribes, although you did mention California homes rotting in Alaska. I am not sure about that. I may question that, since I am from California.

But I did want to ask, Mr. Hoskin, you are the Principal Chief of the Cherokee Nation. I apologize that I missed your testimony. I was really anxious to hear your testimony about the Freedmen. I don't know if you spoke more extemporaneously other than your comments that you had here, but I would like to hear your view—you were praised by the Chair of the Full Committee—I would like to hear more of your testimony, and I apologize again that I was not here. I will let you add to what you said earlier.

Mr. HOSKIN. Thank you, Congressman, and I appreciate the kind words from Chairwoman Waters. Quite simply, this is the law of the land in the Cherokee Nation: equality. Equality not stemming necessarily from recent actions, but equality recognizing that we made a sacred promise 155 years ago. If we believe that treaties are the law of the land, and the United States should live up to their end of treaties, then we have to do the same. And if we look back to what our ancestors did, they agreed to equality. In the

Treaty of 1866, they resolved that issue. But 155 years have passed, and it was not resolved. So, we are undertaking efforts for reconciliation today, not only legal equality on paper, but equality in action, making sure that every person who comes into a Tribal office building, or a program or service, is treated equally based on the fact that they are a citizen of the Cherokee Nation.

And I would note, Congressman, that if you are a citizen of the Cherokee Nation, what signifies that is a card with your name on it, your birthdate, and your citizenship number. And it doesn't have anything to do with your descendancy. It is whether you are a citizen of the Cherokee Nation, and you are treated equal on that basis. We have to make sure that we practice that every day, so we have to make sure that any barriers that might have existed, historically, to access are knocked down.

For example, my good friend, Marilyn Vann, has mentioned Certificate of Degree of Indian Blood (CDIB) cards, degrees of Indian blood. That idea is not relevant to a Cherokee Nation program or service because that is contrary to principles of equality in the Cherokee Nation.

So, those are just a few of the ways in which we are making sure we embrace the spirit of equality, and we are also undertaking efforts to look back at history and culture, artistic expressions of Freedmen descendants that for too long have not been part of the Cherokee story. They are going to be part of the Cherokee story today.

So I could speak a great deal on the subject. It is something that I think has made the Cherokee Nation a better nation, a stronger nation. I can only speak to how the Cherokee experience has gone, and I think other Tribes may look at our experience, may look at our legal history, and they may find instruction based on what we have done and our experience.

Mr. VARGAS. Thank you very much for those comments. I do want to probe a little further if I could with you. You said, sir, that it has been difficult to resolve over time, and that although it has been difficult, obviously you have a better nation, a stronger nation. Well, what made it difficult? Why was it difficult, and why is it difficult for other Tribes?

Mr. HOSKIN. I can't speak for other Tribes, but I can, for the Cherokee Nation—let's look at the Treaty of 1866. Following that period of time, there was still a period of great change and tumult in Indian country. And then, you find the imposition of the State of Oklahoma. So for most of the 20th Century, you find Indian nations—and I will speak really only to the Cherokee Nation, a nation not allowed by the Government of the United States to exercise its rights of self-government. And it is only when we get to the 1970s, that we begin to pick ourselves back up.

I think that interruption of many, many decades really arrested the development of the Cherokee Nation in terms of our civil society. And I think as we have regained our footing, and we had a century of, frankly, suppressing and denying the history of the Freedmen, that it took some time for the body politic to sort of understand that history. That history simply wasn't taught a great deal, Freedmen history, and I think as Freedmen activists and advocates have raised that issue in the 1980s and the 1990s, and into

the 2000s, I think it came to penetrate the consciousness of Cherokee leaders, not only me, but certainly including me.

That process takes time, and I think it is just the unique history of Tribes, particularly within the State of Oklahoma, that caused some delay and difficulty in achieving that.

There is something about a history that involves enslaving other people. I think the United States could relate to this. It just doesn't feel very good, and it's something that perhaps for generations, people don't talk about. But we are talking about it today at the Cherokee Nation. I think we are a better nation for having done it. But when you don't talk about it, Congressman, you don't take action to correct it.

Mr. VARGAS. Thank you very much. My time has expired. I appreciate the extra time. Thank you, Chief Hoskin. And thank you, Mr. Chairman. I appreciate it.

Chairman CLEAVER. The Chair now recognizes the gentleman from Wisconsin, Mr. Steil, for 5 minutes.

Mr. STEIL. Thank you very much, Mr. Chairman. Mr. Walters, I think you would agree that many Tribes still face pretty significant housing challenges. It was noted that one of the last committee hearings on this topic was a remote hearing in the State of Wisconsin, hosted by our former colleague, Sean Duffy. And I have spent time at some of the reservations in Wisconsin and I have seen this firsthand, that Native Americans, in many ways, are more likely to experience poor housing conditions and overcrowding than some other communities.

And as we consider the NAHASDA reauthorization, I think it is important that we also discuss the regulatory and procedural issues in addition to the overall funding levels, that we are looking at process, not just dollars. And so, the question I would like you to expound on, if you would, is ways that we can streamline the construction process for NAHASDA housing so that each dollar can go further. And should Congress consider any national environmental policy act or other permitting reforms that would allow us to be more efficient with our spending?

Mr. WALTERS. Thank you for the question. I think that is a very good place to start. I think the current NAHASDA draft bill includes provisions regarding the Environmental Protection Act. I think when Tribes are developing housing, they are now using multiple sources of funding, from different Federal agencies—Treasury, DOI, HUD, USDA. So, all of those agencies have their own rules and regulations, whether it is environmental or otherwise.

Whereas the current draft bill, and to the extent now Tribes are undertaking housing projects with just HUD funding, they can control that environmental review process and all the other kind of administrative logistics work on their own. But when you start blending these other streams of funding in, you start running into that issue. Currently, the bill would allow the Tribe to keep control of an environmental review process if the NAHASDA dollars were the primary source of funding. That is not necessarily realistic for a lot of these housing developments. These housing developments are usually million-dollar projects, and they don't always have the most HUD funding as part of that. They are going to blend a lot of other

funding sources. So certainly, easing administrative burden will help a lot of Tribes build more home faster.

Mr. STEIL. I think you bring up a really good point that there are multiple streams of funding that are going into many of these projects. Each stream of funding is going to have its own rules and regulations. Is there an approach that you think would be successful in streamlining this, to create more efficiency, or as we look to kind of trying to streamline this, make this more efficient, and remove some of the regulatory red tape that you are facing?

Mr. WALTERS. I think it is a recognition that Tribes are able to do this on their own. They are doing it now under HUD, under Indian Housing Block Grant dollars. So, where they have shown the ability to do that and carry out those processes, there is no reason to make Tribal housing programs jump through the hoops of other agencies just because the funding stream may have come from there. So to the extent possible, I would encourage where a Tribe is building housing and they have that expertise built up over 25 years, let them control the administrative processes under one process overall.

Mr. STEIL. I appreciate your insight on that, and I think there is a lot to be learned from your testimony there on the importance of local control, removing some of that regulatory red tape. We see this time and again here in Washington.

Let me shift gears with my remaining time, if I can, to you, Mr. Brossy. I want to step outside the housing discussion just for a moment and look at some of the broader financial challenges that many Tribes are facing. We have heard from some of the witnesses here today about difficult circumstances in many Tribal areas. I think improving access to financial services can be a really important component of our overall strategy to create more economic opportunity for Tribal members. You noted some of this in your written testimony.

Can you just comment on what you think are some of the clear impediments for financial inclusion that Congress should be looking to address?

Mr. BROSSY. Thank you for the question, Mr. Steil. Again, taking it back to financial literacy, financial training, these are things that are often not taught in schools. They are taught in homes, and when we are dealing with Native communities, we are talking about being in a cash economy for only a couple of generations. So, what Native CDFIs can do around financial literacy, financial education, and credit building is very important, and we want Congress to support it 100 percent.

One thought I had on the earlier question about streamlining dollars for construction and making sure that they go the furthest, there is a movement toward eliminating what we call dual or even triple taxation on development on Indian lands. And that deals directly with the States. I am getting outside of what the Native CDFIs do, but I do think that if we really want to make sure that there is an incentive and not a disincentive for doing projects on Tribal lands, States shouldn't be able to tax those operations at the same level and then not provide services there. There should be some sort of waiver. Some States are looking at this individually, but it also could be at a Federal level.

Mr. STEIL. Thank you very much. And thank you all for your testimony. I yield back.

Chairman CLEAVER. Thank you. The Chair now recognizes the gentleman from Texas, Mr. Taylor, for 5 minutes.

Mr. Taylor. Thank you, Mr. Chairman. I appreciate this hearing. And I will make a broad comment that the discussion we are having about whether or not to reauthorize a program that continues to be appropriated for really underscores the brokenness of the Federal budgeting process. And just something I have noticed since I have been here—this is only my second term in Congress—is that whereas virtually every government that I have ever seen has a single-bill budget, the Federal Government has an authorization process, technically a budgeting, and then a 12-bill appropriations process. That is a very unique budgeting process. It is the only place on Earth that this process is attempted to be tried. In 45 years of trying it, we have actually only gotten 4 budgets on time with this particular process.

And, unfortunately, you are the victims, right? You are trying to come and authorize a program that keeps getting appropriated for, but the authorizations are kind of an extraneous political exercise rather than actually having a real, substantive policy thing.

Anyway, that is a process comment. But you are here, and obviously, this is an important program for your communities.

We have heard a lot of advocacy from the witnesses about the importance of flexibility, the ability to use this program as you see fit. And I was just going to throw it out—are there any other additional flexibilities specifically that you would like to see? If you want to raise your hand, I will call on you. But you all have already said it. It is in your written testimony. Yes?

Mr. WALTERS. I think this goes to some of the other questions we have heard from other members, is the flexibility regarding getting private capital and investment into Indian country, a lot of the questions have kind of been geared towards, where can Tribal communities receive or reach out to private investment? But it is making private investment also work in Tribal communities. There are a lot of tax credit programs that encourage banks and other lenders to participate in development across the country, and there are a lot of programs that emphasize underserved communities. But Tribal communities are always the last group out of the underserved communities in this country—based on their geography, based on their land tenure, based on legal aspects.

So, adding flexibilities there and encouraging that partnership between Tribes and capital and private markets will help overall development in Indian country.

Mr. TAYLOR. Just to that end, as someone who was in the banking industry for a while—and I was reading a 2017 HUD report, and I will just read what it says: "Mortgage lending in Indian country is made difficult by factors common to underserved markets and rural areas," pointing out that lending in Indian country is even more difficult because Tribal land trusts cannot be alienated or encumbered. In other words, if I put a lien on a property, the judicial process may not be clear, whereas in Texas, where I am from, you can foreclose and the bank can take the property if they are not paying their money.

And so, that special legal structure, I think goes to the redlining that you referred to earlier, which is illegal. Under Federal banking law, we don't allow banks to redline, but if you create this special legal structure—and that is a choice that you are making; maybe I am incorrect on that and Congress needs to fix that for you—but the legal structure you have created then, in turn, made it difficult for banks to come in and encumber land. And that may be different by Tribe.

I just threw out a ton of stuff. Yes, Mr. Brossy?

Mr. BROSSY. I have one more thing to add, and that is when we talk about bringing in outside investment and kind of thinking outside the box, one area that we wanted to touch on was bringing folks to the table with new market tax credits. This is something that is not new to the Financial Services Committee. Last year, the Committee on Ways and Means held a hearing, and they sent a letter to the Treasury asking them why there has been almost zero dollars invested, less than 1 percent of allocations for new market tax credits going to Native-led operations, including Native CDFIs and CDEs. And there hasn't been anyone in any Native-led organizations in the past 4 years who has received allocations, despite need and capacity. And that is something that Congress has looked at, and I think it deserves additional scrutiny.

Mr. TAYLOR. Going back to the question of encumbrances and foreclosures, the way property is structured in 50 States, but sometimes not necessary—do you want to speak to that, why you are structured that way, or should you change? Do we need to help you change that? Can you change that? Do you want to change that?

Mr. BROSSY. Yes, that is going to take us about an hour. Land title in Indian country, there are, I think, about 10 different layers. Oklahoma is different than the Navajo Nation, where I am from. But the area that we focus most on, or that we think has been the most difficult to develop, is Tribal trust land. And we need to get folks from the Department of the Interior and HUD together on the same page, working with us.

Mr. TAYLOR. Thank you, Mr. Chairman. I see my time has expired. I yield back the balance of my time.

Chairman CLEAVER. Thank you. Let me thank the witnesses for being here and I apologize—this joint where we work sometimes creates conflicts, and so we had five votes, and you were sitting here waiting patiently for us. So, we apologize for that. It happens all too frequently. Thank you very much.

Under normal circumstances, we probably would have had another round of questions. We won't today, but I would have asked a question about whether or not it is true that some of the five Tribes actually inflate their numbers in order to get a higher allocation of dollars. I am not going to ask the question now or even bring it up, but I thought that it might have been a good question, if we had a little more time.

The Chair notes that some Members may have additional questions for these witnesses, which they may wish to submit in writing. Without objection, the hearing record will remain open for 5 legislative days for Members to submit written questions to these witnesses and to place their responses in the record. Also, without

objection, Members will have 5 legislative days to submit extraneous materials to the Chair for inclusion in the record.

The hearing is adjourned.

[Whereupon, at 4:35 p.m., the hearing was adjourned.]

A P P E N D I X

July 27, 2021

"NAHASDA Reauthorization: Addressing Historic Disinvestment and the Ongoing Plight of the Freedmen in Native American Communities"

United States House of Representatives
House Financial Services Committee
Housing & Insurance Subcommittee

July 27, 2021

Testimony of
Jackson Brossy, Executive Director
Native CDFI Network

Yá'át'ééh, Chairman Cleaver, Ranking Member Hill, Chairwoman Waters, and members of the House Subcommittee on Housing, Community Development, and Insurance. My name is Jackson Brossy and I serve as Executive Director for the Native CDFI Network (NCN), the only national member organization of community development institutions (CDFIs) serving Native American communities. I am also a member raised on the 27,000 square mile Navajo Reservation. As a Navajo member, the subject of housing, homeownership and the basic ability to build a safe family life in a home with running water and electricity is near and dear to my heart. At NCN, our member organizations serve Indigenous people in 27 states and provide access to capital for first-time homeowners, micro entrepreneurs, and consumers who are often unable to get a conventional bank loan or are otherwise in unserved, and live in redlined areas of the Country that are located in and around Indian Country.

Yes, Indian Country has been redlined and in many ways is still so when it comes to access to capital and housing finance in particular. Redlining, historical underinvestment in programs like NAHASDA and the CDFI Fund, and a lack of access to capital contribute to the current housing situation where Native Americans live in substandard housing with more than 30% of members of the Navajo Nation without access to running water, with Native Americans living in overcrowded households at a rate of nearly 700% higher than the rest of the US population according to a 2017 HUD survey.[1] The fact is many Native Americans are living in unacceptably substandard housing conditions.

Not only are there severe problems with the housing stock, infrastructure and overcrowding, but there are also severe problems when it comes to financial literacy, access to credit, and the prices Indigenous people pay when they finally do get a loan. Just before the pandemic hit in 2019, the Federal Reserve found that Native Americans living on reservations who want to buy homes are significantly more likely to have high-priced mortgages, and those mortgage rates average nearly 2 percentage points higher than for non-Native Americans outside reservations.[2] According to the Federal Reserve, this means a Native American family purchasing a $140,000 home on a reservation could pay $100,000 more over the course of a 30-year loan than a non-Native American purchasing a home outside a reservation would pay.

The problems of overcrowded housing, dilapidated and unacceptable housing stock, the higher cost of homeownership, and redlining in Indian Country are unacceptable and I am here to share one solution to help with this problem – Native CDFIs. Native CDFIs across the country are doing our part to help address this untenable position, and we can use all the help and investment to make an even greater impact upon this problem. There are 69 Treasury-certified Native CDFIs that serve their respective communities across the US by providing access to

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[1] Levy, D. K., Biess, J., Baum, A., Pindus, N., & Murray, B. (2017, January). *Housing Needs of American Indians and Alaska Natives in Urban Areas: A Report from the Assessment of American Indian, Alaska Native, and Native Hawaiian Housing Needs.* , U.S. Department of Housing and Urban Development, Office of Policy Development and Research. https://www.huduser.gov/portal/sites/default/files/pdf/NAHSG-UrbanStudy.pdf

[2] Federal Reserve, Center for Indian Country Development, Catanneo, L., & Feir, D. (2019, September). *The Higher Price of Mortgage Financing for Native Americans* (Working Paper Series: 1906). Federal Reserve Bank of Minneapolis. https://www.minneapolisfed.org/~/media/assets/papers/cicdwp/2019/cicd-wp-201906.pdf

capital to the unbanked and also provide financial literacy and technical assistance to borrowers. These Native CDFIs operate across a wide spectrum of organizations and include tribally-sponsored CDFIs like the Citizen Potawatomi Community Development Corp. of Oklahoma, while the majority of Native CDFIs are independent 501(c)(3) loan funds like the Native360 Loan Fund of Nebraska, and serve communities from Hawaii (Homestead Loan Fund) to Alaska (Bristol Bay Development Corp.), to Maine (Four Directions).

In addition to loans and critical financial training and technical assistance for entrepreneurs and fighting payday lenders, many Native CDFIs offer homeownership loans, down payment assistance, and homebuyer training so that after building up credit, new homeowners have the tools to keep their homes and build a solid financial foundation for their families.

Aligned with the spirit of the Native American Housing and Self-Determination Act (NAHASDA), Native CDFIs are self-determination in practice and action. They carry out the mission of NAHASDA and the CDFI Fund by increasing homeownership for people who have never owned a home, and utilize both HUD opportunities such as Section 184 Loan Guarantees, HUD housing counseling, and other existing federal programs such as the USDA 502 Direct Loan program, the Veterans Affairs Native American Direct Home Loan program, and the Federal Home Loan Bank system, to help their communities exercise self-determination to utilize these tools to the fullest.

Despite Native CDFIs' proactive efforts to employ existing tools, many of these tools can still be improved and virtually all are underfunded for the scope of this homeownership challenge. After underfunding of programs such as the Native American CDFI Assistance program, a major impediment to increased homeownership in Indian Country is a critical review of title processing on tribal trust lands. Slow turnaround of Title Status Reports (TSRs) by the Bureau of Indian Affairs and coordination between HUD and the Department of Interior (DOI) must be critically examined in order to increase utilization of the Section 184 Home Loan Guarantee program which is largely used for off-reservation homes despite potential for use on tribal trust lands.

Additionally, the Section 184 Loan Guarantee program, and other federal programs can be streamlined to increase Native CDFI lender participation by ensuring tribally-sponsored CDFIs are automatically eligible to be lenders after gaining Treasury certification. Currently tribal CDFIs must complete the added step of submitting to state jurisdiction in order to register under the Nationwide Multistate Licensing System & Registry (NMLS) – this is obviously a problem for any sovereign. Additionally, we urge HUD to continue working with Native CDFIs to ensure more Native-led organizations are certified as Housing Counseling Agencies (HCAs). Because Native CDFIs have not been HCAs or have been unable to meet the burdensome HUD requirements, outside or non-Native entities often receive the only available HUD resources to deliver housing counseling education when they could easily be delivered by existing Native organizations.

NCDFIs like the Four Bands Community Fund of the Cheyenne River Reservation are doing an incredible job helping would be homeowners access the USDA 502 Direct Loan program through a pilot in South Dakota. According to the South Dakota Native Homeownership Coalition, in FY 2019, Rural Development made 6,194 direct loans for rural homes, but only six of them were for homes on tribal land. Thanks to the pilot and Native CDFIs like Four Bands, Native people are finally getting access to this program in South Dakota and we urge expansion of this pilot across the nation. Senators Smith and Rounds have introduced the bipartisan S. 2092 to expand and finally fund this program. We urge the House to similarly adopt this bill and finally allow Native people to access this program at an equitable level.

The pandemic has pulled back the veil around the challenge of inadequate and poor housing in Native American communities. I urge Congress and this Committee to build upon the focus of this hearing and support the spirit of self-determination in NAHASDA. It is time to provide the resources to fund housing efforts and to eliminate the barriers to utilizing other existing housing tools. Native CDFIs stand ready to work nimbly and with direct input from Native communities to increase homeownership and adequate housing. As a Navajo Nation member, I look forward to the day when all Native people have access to running water and electricity and can live in safe homes that are not overcrowded or in danger of condemnation. I know that Native CDFIs can and will help with this mission and I look forward to working with Congress to deliver upon this promise.

Thank you and ahxéhee'.

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Office of the Chief

Chuck Hoskin Jr.
Principal Chief

Bryan Warner
Deputy Principal Chief

July 27, 2021

Written Testimony of Cherokee Nation Principal Chief Chuck Hoskin, Jr.
House Subcommittee on Housing, Community Development, and Insurance hearing on
"NAHASDA Reauthorization: Addressing Historic Disinvestment and the Ongoing Plight of the Freedmen in Native American Communities"

Chairman Cleaver, Ranking Member Hill, Chairwoman Waters, and distinguished members of the House Subcommittee on Housing, Community Development, and Insurance:

Osiyo, and thank you for holding this important hearing. It is my honor to speak with you today on behalf of the 400,000 citizens of Cherokee Nation.

Supreme Court Justice Hugo Black concluded his dissent in *Federal Power Commission v. Tuscarora Indian Nation* with a powerful reminder. "Great nations, like great men, should keep their promises."

At its essence, today's hearing is about promises, and the historic failure of two great nations to keep those promises. The first nation I speak of is the United States, and its continued struggle to meet its federal trust obligation related to housing. The second is Cherokee Nation and its denial of rights granted to Cherokee Freedmen through the Treaty of 1866.

I cannot speak to the actions—or non-actions—of the federal government. Congress must decide whether it wants to fulfill its trust responsibility and invest in Native American housing programs in a significant and consistent manner.

But I can sit before you today, next to my good friend Marilyn Vann, and honestly and proudly speak to the many actions taken by Cherokee Nation over the last 5 years to help right our wrong. I can tell you that Cherokee Nation is a better nation for having recognized full and equal citizenship of Freedmen descendants. I can tell you that we are a nation that keeps its word.

Our obligation to Cherokee Freedmen is found through Article 9 of the Treaty of 1866:

> *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.***

What the opponents of Freedmen rights ignore is that the issue of full Freedmen citizenship was settled long before 2021, 2017, or 2007. It was settled in 1866, by a treaty that was ratified by the Senate, signed by the President of the United States, and is the supreme law of the land. This is and was not a living issue—it was settled by our ancestors.

The Treaty of 1866 is our last treaty with the United States, and it also reaffirmed important portions of all previous treaties, including the 1835 Treaty of New Echota that provides for our delegate to the U.S. House of Representatives.

The Treaty of 1866 remains alive and well, as a federal judge affirmed in 2017. Its relevance today impacts everyone within our treaty-based reservation, which was reaffirmed by the U.S. Supreme Court through last year's *McGirt* decision.

The Treaty of 1866 is a legally binding document that ties together every agreement Cherokee Nation has ever had with the United States. Breaking the Treaty of 1866 could be our undoing.

Through Article 9 of the Treaty of 1866, we agreed to give Freedmen "all" the rights of native Cherokees. Not some rights. Not rights subject to a popular vote. Not rights with an expiration date. "All the right of native Cherokees." Any right Cherokee Nation had to enslave human beings, or deny them or their descendants full citizenship, was disposed of by treaty 155 years ago.

Certain Cherokee Nation leaders, however, opted to ignore our 1866 Treaty and its strong commitment to equality and push policies designed to exclude Freedmen descendants from their political community. This was most apparent in 2007, when we amended our constitution to limit citizenship "to only those persons who were Cherokee, Shawnee, or Delaware by blood."

In the wake of this unfortunate action, Congress added limitation language to a reauthorization of the Native American Housing Assistance and Self Determination Act (NAHASDA):

> SEC. 801. LIMITATION ON USE FOR CHEROKEE NATION.
> *No funds authorized under this Act, or the amendments made by this Act, or appropriated pursuant to an authorization under this Act or such amendments, shall be expended for the benefit of the Cherokee Nation; provided, that this limitation shall not be effective if the Temporary Order and Temporary Injunction issued on May 14, 2007, by the District Court of the Cherokee Nation remains in effect during the pendency of litigation or there is a settlement agreement which effects the end of litigation among the adverse parties.*

As the Congressional Research Service wrote, at the time of the 2008 reauthorization "some lawmakers supported denying NAHASDA funding to the Cherokee Nation if it did not restore tribal citizenship rights to the Cherokee Freedmen. Others opposed such efforts, citing reluctance to intervene in a dispute that was being considered in the courts and concerns about the effect that denying NAHASDA funding would have on low-income members of the Cherokee Nation."

Ultimately, Congress prohibited Cherokee Nation from receiving NAHASDA funding unless (1) a specific temporary injunction in tribal litigation on the Cherokee Freedmen dispute remained in effect during litigation or (2) there was a settlement to the litigation.

This litigation ended in 2017, when Judge Thomas F. Hogan of the U.S. District Court for the District of Columbia ruled in favor of the Freedmen in *Cherokee Nation v. Nash*. Per Hogan's opinion, the 1866 Treaty guarantees that extant descendants of Cherokee freedmen shall have "all the rights of native Cherokees," including the right to citizenship in the Cherokee Nation.

> *Although the Cherokee Nation Constitution defines citizenship, Article 9 of the 1866 Treaty guarantees that* ***the Cherokee Freedmen shall have the right to it for as long as native Cherokees have that right. The history, negotiations, and practical construction of the 1866 Treaty suggest no other result. Consequently, the Cherokee Freedmen's right to citizenship in the Cherokee Nation is directly proportional to native Cherokees' right to citizenship****, and the Five Tribes Act has no effect on that right.*
>
> *The Cherokee Nation can continue to define itself as it sees fit but* ***must do so equally and evenhandedly with respect to native Cherokees and the descendants of Cherokee freedmen. By interposition of Article 9 of the 1866 Treaty, neither has rights either superior or, importantly, inferior to the other. Their fates under the Cherokee Nation Constitution rise and fall equally and in tandem****. In accordance with Article 9 of the 1866 Treaty, the Cherokee Freedmen have a present right to citizenship in the Cherokee Nation that is coextensive with the rights of native Cherokees.*

We did not appeal this decision. We immediately began accepting and processing citizenship requests from Freedmen descendants. To date, we have approved and processed more than 8,500 such requests.

Shortly after the Federal court decision, the Cherokee Nation Supreme Court issued its own order binding the Nation as a matter of settled tribal law in complete accordance with the Federal District Court's order in *Nash*. Specifically, the Supreme Court determined,

> *that the [Nash] case was entered into voluntarily by the Nation, that the Nation had a full and proper presentation of its case, and that* ***the Nation is therefore now subject to the opinion of the D.C. District Court****...and...* ***[f]urther, this Court recognizes that the Treaty of 1866 has been and remains fully binding on both the Cherokee Nation and the United States,*** *and to recognize the rights of those individuals who can trace an ancestor to the Dawes Freedmen rolls to obtain citizenship within the Nation.*

Therefore, the Court,

> ***Order[ed], Adjudge[d], and Decree[d] that the memorandum opinion issued August 30, 2017 by the District Court of the District of Columbia … is enforceable within and against the Cherokee Nation****, and that therefore the Cherokee Nation Registrar, and the Cherokee Nation government and its offices, are directed to begin processing the*

> *registration applications of eligible Freedmen descendants,* ***and that such Freedmen descendants, upon registration as Cherokee Nation citizens, shall have all the rights and duties of any other native Cherokee.***

Most recently, at the request of Attorney General Sara Hill, the Cherokee Nation Supreme Court unanimously ruled that the "by blood" language included the Cherokee Nation Constitution violated the Treaty of 1866 and was thus void. The order states the language is "illegal, obsolete, and repugnant to the ideal of liberty," and the words "by blood" are "void, were never valid from inception, and must be removed wherever found throughout our tribal law."

> *Unequivocally,* ***Freedmen have rights equal to "by blood" or native Cherokees. … Freedmen rights are inherent. They extend to descendants of Freedmen of as a birthright springing from their ancestors' oppression and displacement as people of color recorded and memorialized in Article 9 of the 1866 Treaty.*** *… The "by blood" language found within the Cherokee Nation Constitution, and any laws which flow from that language, is illegal, obsolete, and repugnant to the ideal of liberty. These words insult and degrade the descendants of Freedmen much like the Jim Crow laws found lingering on the books in Southern states some fifty-seven years after the passage of the 1964 Civil Rights Act.* ***"By blood" is a relic of a painful and ugly, racial past. These two words have no place in the Cherokee Nation, neither in present day, nor in its future.*** *… From this day forward, may we prosper as a nation and embrace one another with mutual respect, regardless of color, race, and ancestry, as that which we are: Cherokee citizens.*

The "by blood" language was a stain on our history and a haunting remnant of a sad period. We could not move forward with those words remaining in our constitution and laws, as some within the Nation were clinging to them in order to divide our people and belittle and demean the rights of Freedmen.

Earlier this year Secretary of the Interior Deb Haaland approved the Cherokee Nation Constitution, which "explicitly ensures the protection of the political rights and citizenship of all Cherokee citizens, including the Cherokee Freedmen." As Secretary Haaland made clear upon approving our constitution, **"The Cherokee Nation's actions have brought this longstanding issue to a close and have importantly fulfilled their obligations to the Cherokee Freedmen."**

While this issue is settled, there is still much work to do. We are on a path of reconciliation, but we need to do more than acknowledge the legal principle of equality—we must seek to embrace the spirit of equality each day.

Because no nation can truly prosper when any of its citizens are victims of discrimination.

As Native people, we know this all too well. We have experienced too many similar painful chapters—from the Trail of Tears, to governmental policies designed to terminate our political existence and destroy our culture. We must have difficult conversations about these injustices,

and the accountability, reconciliation, and restitution that must follow, because they still shape the world that we live in today.

Unity doesn't just happen overnight. For more than a century Freedmen had been disconnected from Cherokee Nation. This exclusion meant many in the Freedmen community did not have the same experiences, the same access to services, the same opportunities, the same understanding of citizenship as non-Freedmen citizens. It is essential that we work to bridge that gap.

Even as we wipe away the overt or hostile discrimination, we need to make efforts to ensure that opportunities afforded to all Cherokee citizens are just that: afforded to all Cherokee citizens.

For this reason, on November 7th of last year I signed an executive order on equality, reiterating Cherokee Nation's commitment to equal protection and equal opportunity under Cherokee law.

The order directs our executive branch to determine whether barriers to equal access to services exist, to remove such barriers and to establish plans for outreach to citizens of Freedmen descent and other historically excluded communities within our tribe.

We also need to make sure that we are cognizant of the history and the Freedmen experience. In late 2020 I announced the Cherokee Freedmen Art and History Project, which seeks to provide a better understanding of Cherokee Freedmen history and enhance how those voices are represented within the Cherokee story. Cherokee society will be further enriched, and the cause of equality enhanced, by celebrating Freedmen history and art as part of a whole and complete Cherokee story.

The project began earlier this year and is harnessing continued conversations and collaboration with Cherokee Freedmen community advisors to elevate the voice of Cherokee Freedmen. The project will include comprehensive research for historical materials, references, documents, and images, as well as an assessment of current interpretations at all tribal sites.

We will utilize the assessment to identify gaps in its representation and storytelling and develop new content that shares the Freedmen perspective throughout tribal history. The content will help educate Cherokee Nation citizens and the public through special projects, including an exhibit at the Cherokee National History Museum beginning in 2022.

I will end with a word on housing investments, as housing has been a priority of mine since before I took office.

In one of my first acts as Chief-elect I announced the Housing, Jobs and Sustainable Communities Act, a $30 million plan to repair Cherokee homes, remodel community buildings, and create jobs across northeastern Oklahoma. Across the Cherokee Nation we have a lot of elders that need help with housing issues, such as a leaking roof or a floor caving in.

Prior to my plan we were using federal dollars to fix these homes. However, the demand simply outpaced the supply. The Housing Authority of the Cherokee Nation is one of the finest housing authorities in the nation, offering low-income rental housing, rental assistance, college housing,

housing rehabilitation, and a home construction program that allows Cherokee Nation families to achieve their goal of home ownership.

But like so many things, if we waited around for the federal government to live up to its obligations, we were going to be waiting a long time. Elders were waiting years and years for help due to lack of federal housing resources. Because of this underinvestment, we decided to spend more than $20 million of our own money on home repair and we're actively working to clear the backlog and provide safe and sustainable housing for our most vulnerable citizens.

Indian Country needs Congress to make consistent and significant investments in Native housing programs, and that starts with a robust reauthorization of NAHASDA. I urge the committee to swiftly move forward with a bipartisan reauthorization bill that can pass the Senate and be signed into law.

That said, I would respectfully ask the committee to not seek limitation riders that seek to tie needed funding to a desired outcome—on NAHASDA or any other vehicle that includes housing funding or housing policy. One might look at the Cherokee Nation story and come away with the conclusion that the 2008 limitation language brought us to where we are today. This is not the case. So, I request that Members carefully consider the language they put forward and not look to implement policy that conditions funding for a Tribe or group of Tribes.

Thank you for this opportunity to testify on these important topics.

Wado.

Chuck Hoskin Jr.
Cherokee Nation Principal Chief

TESTIMONY OF

CHRIS KOLEROK

DIRECTOR OF PUBLIC POLICY AND GOVERNMENT AFFAIRS

COOK INLET HOUSING AUTHORITY

U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON FINANCIAL SERVICES

SUBCOMMITTEE ON HOUSING, COMMUNITY DEVELOPMENT AND INSURANCE

"NAHASDA REAUTHORIZATION: ADDRESSING HISTORIC DISINVESTMENT AND THE ONGOING PLIGHT OF THE FREEDMEN IN NATIVE AMERICAN COMMUNITIES"

JULY 27, 2021

Chairman Cleaver, Ranking Member Hill, and Members of the Subcommittee, thank you for the invitation to participate in today's hearing. My name is Chris Kolerok, I am Cup'ik Eskimo, a member of the Native Village of Mekoryuk, and I serve as Director of Public Policy at Cook Inlet Housing Authority, the Tribally Designated Housing Entity for the Cook Inlet region of Southcentral Alaska. I have the honor of being unanimously voted as the Legislative Committee Chair of the Association of Alaska Housing Authorities, and unanimously voted as Board Member for the National American Indian Housing Council representing Alaska. My comments represent all of the 14 regional housing authorities that cover every geographic corner and Native population group in Alaska.

Support for NAHASDA Formula in the Housing is Infrastructure Act of 2021

Cook Inlet Housing Authority and its sister organizations support the funding mechanism found in the Housing is Infrastructure Act of 2021. This historic investment in Native housing will go a long way to rebuild infrastructure in Native Communities. The use of the existing funding mechanism will increase the speed and efficiency of the effort. I and my Alaskan colleagues thank Financial Services Committee Chairwoman Waters for her respect of tribal self-determination, respect of the negotiated rulemaking process, and the goal of efficiently distributing needed funding without administrative burden or waste, by allocating Indian Housing funding through the NAHASDA formula in the Housing is Infrastructure Act of 2021.

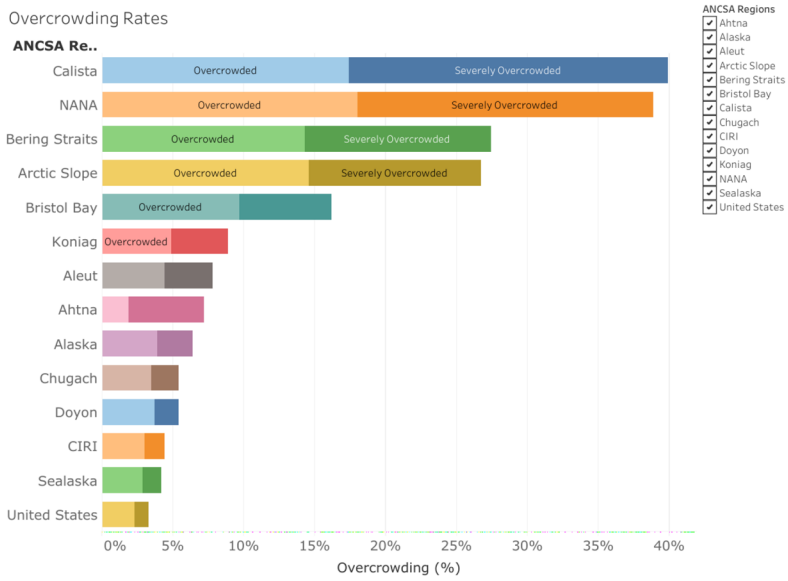
Housing is the first piece of infrastructure in a village. Roads, water lines, power, and more do not exist to serve empty places. They serve people's homes. The funding appropriated under the authority of the Native American Housing and Self Determination Act (NAHASDA) is the primary and sometimes only funding source for development of housing that provides the support for northern climate construction and opportunity to adapt to the subsistence economics of village life. Support for NAHASDA funding is key for ensuring villages have an opportunity to bring the infrastructure needed to advance economic opportunity in rural Alaska.

Our remote rural villages cannot survive without adequate, affordable housing. The safety officers, teachers, healthcare workers, and power plant operators who are essential for a village to survive need housing to live in themselves, in addition to having adequate housing for those who are locally born and raised. Without a decent place to live, these essential workers will not take jobs in villages. When speaking with law enforcement, school districts, and healthcare providers, housing is often mentioned as the

number 1 impediment to attracting workers to remote Alaska. If these services are not provided, people leave the village in search of a better life. If young people are leaving, who will take care of elders with subsistence hunting and fishing? If a village cannot attract and retain those who are essential to their community, how can their village thrive?

Need for Housing investment

Housing for our Native people is overcrowded and inadequate in our rural villages. On a national scale, the 2017 Housing Needs of American Indians and Alaska Natives study from HUD tells us we need 33,000 homes to alleviate overcrowding and 34% of our homes have a major physical deficiency in tribal areas.[1] Closer to home, the Alaska Housing Finance Corporation in their 2018 Alaska Housing Assessment found that 40% of homes in the Yukon-Kuskokwim are overcrowded or severely overcrowded and 35% have incomplete plumbing.[2]

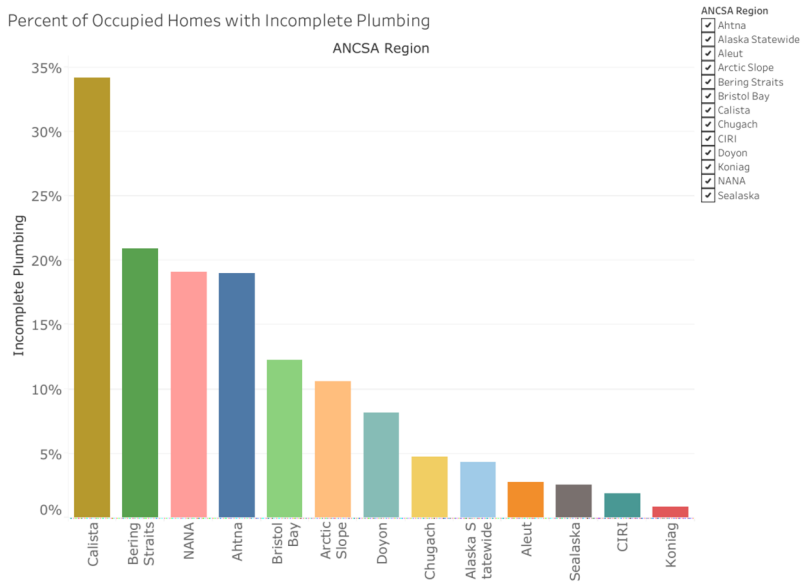


HUD defines a home as overcrowded if it has more than 1 person per room, and severely overcrowded if it has more than 1.5 people per room

[1] Accessed at https://www.huduser.gov/portal/publications/HousingNeedsAmerIndians-ExecSumm.html on July 20, 2021

[2] Accessed at https://www.ahfc.us/pros/energy/alaska-housing-assessment/2018-housing-assessment on July 20, 2021

The overcrowding is so bad for some homes that 18 people share a small 3-bedroom home requiring people to sleep in shifts throughout the day for lack of surfaces for everyone to sleep at once. How can people sleeping the day shift ever hold down a job? How can children learn when their home is so over-crowded that they have no place to study, and they carry the stress and anxiety of their home life into school? How will those children grow up and have a job if they never had a chance to learn how to read and do math?



Homes lacking hot and cold running water, a tub or shower, or a flush toilet are considered to have incomplete plumbing.

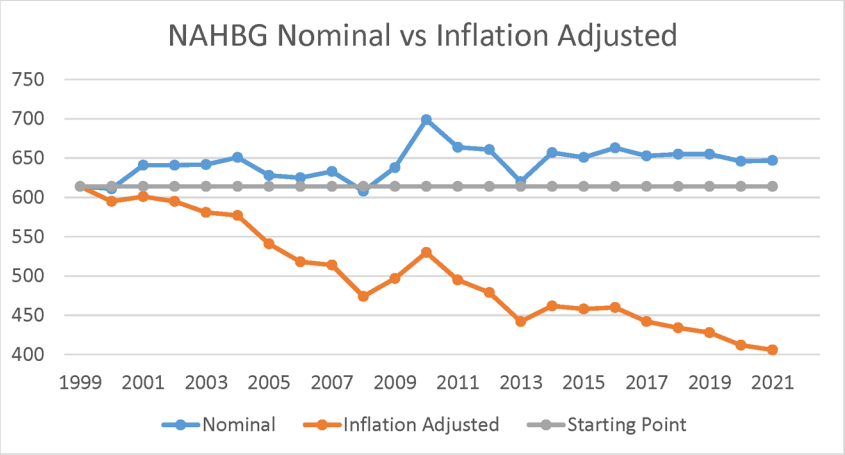
(Alaska Housing Finance Corporation charts from their 2018 Housing Assessment)

Over the last 20 years Congress has under-funded Native housing egregiously compared to non-Native housing. Total funding for the overall Department of Housing and Urban Development (HUD) has far outpaced NAHASDA specifically, and far ahead of inflation. In FY 2001 HUD's budget was approximately $28 billion[3] and the Native American Housing Block Grant (NAHBG, or interchangeably the Indian Housing Block Grant, IHBG, depending on the appropriation year) specifically was $646MM.[4] Fast forward to FY

[3] Accessed at https://archives.hud.gov/budget/fy02/budgetbk.pdf on July 20, 2021

[4] P.L. 106-377 accessed at https://www.congress.gov/bill/106th-congress/house-bill/4635/text?q=%7B%22search%22%3A%5B%22cite%3APL106-377%22%5D%7D&r=1&s=1 on July 20, 2021

2021 and HUD's overall budget authority was $60 billion[5], and the NAHBG specifically was $647 million.[6] If Indian Housing was funded at parity with inflation, it would be funded at approximately $960 million for FY 2020. This is key: all of HUD has gained over 25% in purchasing power whereas Indian housing has lost over 30%. This inequity toward Native people cannot continue.



Approximately half of all available Native American Housing Block Grant (NAHBG) funding is committed to providing operating assistance to housing units built prior to NAHASDA, units that are 20-40 years old. Only after that funding is allocated can the remaining NAHBG funding be allocated to Tribes to address unmet housing needs. However, the costs of operating and maintaining all of the NAHASDA units built over the past 20 years comes out of this "Needs" portion of the allocation. Increasingly, this leaves less and less funding to meet housing needs that continue to grow. The HUD Housing Needs Assessment confirms that new development has begun to slow. We believe that is primarily because tribes need to use more of the available NAHASDA Needs funding just to keep the lights on and the doors open.

The cost of construction in Alaska is often two to three times the total development cost (TDC) of construction for Indian Reservations located in the Lower-48 and some TDCs in Alaska have quadrupled since 1999. Although an average per sq. ft. cost to construct a modest 1200 sq. ft. home is can be between $300-$350 / sq. ft. range ($360,000 - $420,000), costs in some of the more remote communities are be as high as $450/ sq. ft. ($540,000) or more.

The largest cost drivers for Alaskan housing construction are construction wages, construction materials, and transportation. Over the last 20 years those factors increased in prices by 56% for construction labor,[7]

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[5] HUD Budget Brief 2022, historical enacted 2021 budget on page 2; accessed at https://www.hud.gov/sites/dfiles/CFO/documents/2022_Budget_in_Brief_FINAL.pdf on July 20, 2021
[6] P.L. 116-260 accessed at https://www.congress.gov/bill/116th-congress/house-bill/133/text on July 20. 2021
[7] BLS, Employment Cost Index: Wages and Salaries: Private Industry Workers: Construction https://fred.stlouisfed.org/series/ECICONWAG

70% for construction material,[8] and 52% for water freight and 64% for air freight.[9] These costs, combined with Alaska's unique logistical issues, result in housing construction costs that are astronomical in Alaska. This increase in cost of construction, directly impacts the price of the home and therefore the fair market rent value as illustrated below.

The NAHASDA formula works

NAHASDA is codification by Congress of the unique relationship between the Federal government and sovereign Native American nations, authorizing tribes to address their unique housing needs through various activities such as construction, rehabilitation, modernization, rental assistance, lending programs, crime prevention, and a host of other strategies. Unlike previous housing programs, NAHASDA recognizes the Federal government's trust obligation to promote the well-being of Native peoples and empowers tribes to exercise self-determination in the development and implementation of strategies to address their particular housing needs. NAHASDA has been reauthorized twice before and although bills have been reintroduced every year since it has expired, there has not been a bill that has passed Congress.

Indian housing is not merely a federal entitlement or "discretionary program," but, like many other Indian programs, has its roots in a solemn trust responsibility to Indian nations and peoples. Housing conditions in Indian country are well documented as being some of the worst of the worst. Alaska Natives suffer from escalating and above national average rates of overcrowding, inadequate housing, and unemployment, both as to the general U.S. population, and within the Native American population as well. Indian housing programs have a unique legal and equitable justification for discrete consideration apart from actions taken relative to other federally funded programs, *including in particular, those within HUD*.

Quantifying the need for housing among 500+ tribes across the entire U.S. is a monumental data exercise. At the creation of NAHASDA, tribes across the country and HUD gathered to engage in Negotiated Rulemaking. This consensus model required everyone to agree on the data that would feed a non-competitive distribution method that would not require annual competitions and would provide on-going ability to plan and operate housing. There are more than 10 factors that affect the formula, from overcrowding rates, population, physical deficiency and more. This allowed out tribes to move beyond annual competition and work together.

Two anecdotal examples are key here. First, prior to NAHASDA, Cook Inlet Housing Authority (CIHA) was able to construct 267 housing units. After NAHASDA, CIHA constructed over 1,700 housing units, in nearly half the time. Second, because our non-competitive position, AVCP Regional Housing Authority in Bethel asked us to use our expertise in Low Income Housing Tax Credits and project management to assist them in financing rental units in their region. This would not have happened when we were competing for the same pool of funding before NAHASDA was enacted.

Native Housing Pre-NAHASDA

Pre NAHASDA, housing decisions were made by the Federal Government and houses were placed in our communities without specific consideration of the community, region or climate. Our communities have

[8] BLS, Producer Price Index by Commodity for Special Indexes: Construction Materials
https://fred.stlouisfed.org/series/WPUSI012011
[9] BLS, Producer Price Index by Industry: Scheduled Freight Air Transportation
https://fred.stlouisfed.org/series/PCU481112481112P

changed dramatically since these times. For example, as permafrost melts, foundations are compromised and homes are being pulled apart, *literally*. Our current housing stock needs to be preserved in order to keep our families housed. The alternative are families living in substandard conditions and overcrowding will increase when the housing stock further declines. Infrastructure investments in our communities is also a critical component to spurring new construction. According to the Alaska Department of Environmental Conservation, Division of Water, as of March 2019, Alaska has 28 rural communities that are considered "unserved," meaning that 45% or more homes have not been served either via pipes, septic tank & well, or covered haul systems. Communities that do have adequate or excess water and wastewater infrastructure in place often require these systems to be upgraded before more homes can be added onto the systems.

The power of NAHASDA is that each tribe decides its own priorities, so that the NAHASDA funding can be used to address different needs, such as permafrost melting in one community and water and sewer issues in another community. Because of the flexibility of NAHASDA funding, the tribe itself decides the best place for these funds to be spent based on the needs of their people. When considering the cost of new construction, versus the cost of preserving housing at risk of falling into uninhabitable condition due to disrepair, the cost benefit analysis is simple. However, competitive programs that prioritize new construction, despite statutory language stating "construction *AND* rehabilitation" forces tribes into a "sophie's choice:" no new money, OR focus on new construction in the hopes of winning a competitive award. The new construction money does not include operating assistance, so the competitive awards pressure tribes to create long-term liabilities that further depress their future ability to construct and rehabilitate homes.

The power of NAHASDA is also in its ability to allow long-term planning, operation, and cooperation. Prior to NAHASDA, the only way to build new housing was to compete for the funding. The rise of the IHBG Competitive program is understandable given the stagnation of the NAHBG formula. With 20 years of underfunding it is easy to say the program as a whole needs change. But the real problem is an IHBG that should be $960 Million but is only $647 Million. As tribes do not have enough funding to operate existing housing, deal with rising threats such as meth contamination, and construct new housing, it is easy to say we need a new program. However, adding funding to the formula to preserve the tribal discretion and flexibility will achieve the same result, and faster with less administrative waste.

NAHASDA Reauthorization

NAHASDA is the statutory framework upon which the Native American Housing Block Grant is built. Reauthorization not only provides an easier path for continued appropriations, but improvements to the programs under NAHASDA's authorization. Without reauthorization we risk the long-term viability of this important resource and commitment by Congress to Tribes. With Tribes facing the above mentioned issues, and the demonstrated success and power of NAHASDA, its reauthorization is needed now more than ever. I thank the members of the Subcommittee and am happy to respond to questions at your convenience.

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Testimony of Marilyn Vann,
President of Descendants of Freedmen of the Five Civilized Tribes Association
Presented to the Subcommittee Housing, Insurance, and Community Development
Committee on Financial Services
United States House of Representatives
"NAHASDA Reauthorization – Historic Divestment and the Ongoing Plight of Descendants of Freedmen In Native American Communities"
July 27, 2021

Greetings, Chairman Cleaver, Ranking Member Hill, Distinguished Members of the House Financial Services Committee. My name is Marilyn Vann and I serve as the President of the Descendants of Freedmen of the Five Civilized Tribes Association, which is an Oklahoma based nonprofit. The organization educates the public on the 1866 treaties, which created citizenship rights for the black freedmen and freedmen descendants of the Five "Civilized" Tribes (Cherokee Nation, Muscogee Creek Nation, Seminole Nation of Oklahoma, Choctaw Nation of Oklahoma, and Chickasaw Nation). The Association also works for an end to Federal and tribal discrimination against freedmen descendants in tribal enrollment, and in receiving Federal and tribal funded services available to members/citizens of federal recognized tribes. Our organization has members and official supporters throughout the United States and incorporated in 2002. I have been President of the organization since incorporation. On behalf of the Association, I want to thank the Subcommittee for holding today's hearing and for issuing an invitation to me to testify before you today on this important issue. In addition, I want to recognize and thank Chairman Maxine Waters and her staff for their steadfast support of the freedmen and to strengthening NAHASDA.

I am a member of the Cherokee Nation and was a litigant in the DC Federal court litigation, *Cherokee Nation v. Nash and Vann v Zinke* and all the historical research for the legal briefs. These cases reaffirmed the 1866 treaty rights to tribal membership of Cherokee freedmen descendants. In 2021, I was also a litigant in Cherokee Nation tribal court case (*Mayes v. Cherokee Nation Election Commission and Vann*), which dealt with the rights of freedmen tribal members to hold office. Although I am not an attorney (I am a retired engineering team leader), I have spoken on the history and the rights of the freedmen descendants for almost 20 years including at the Congressional Black Caucus Foundation meetings in 2007 and 2008. My ancestors on the federal Dawes Indian tribal rolls were registered as Cherokee, Chickasaw, and Choctaw freedmen although I do have documented Cherokee and Chickasaw Indian ancestry. By education I have a BS degree in engineering and retired from the Federal government as a Treasury Department Engineering Team leader with 32 years of Federal service.

NAHASDA Draft Legislation – Title VI, Section 604 (Compliance with Treaty Obligations)

Honorable Committee members, I appear before you today to urge you to include Title VI Section 604 Compliance section in the final NAHASDA reauthorization bill that is adopted by Congress. This provision would authorize the Secretary of the Department of Housing and Urban Development (HUD) to withhold or reduce NAHASDA funds from one (or more) of the 5 Oklahoma based tribes (formerly known as the Five Civilized Tribes)

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if the tribe is found to be in violation of 1866 treaty obligations relating to lineal descendants of freedmen registered on the Final Rolls approved by Congress in 1907. It is important to note that this provision only applies to the five tribes referenced in this testimony. Current NAHASDA law includes a provision (section 801) passed in 2008 that limits NAHASDA funds to the Cherokee Nation if a temporary court order continuing freedmen citizenship was violated during the pendency of the federal litigation. Litigation ended in 2017 after United States District Court Judge Thomas Hogan ruled in favor of the Cherokee freedmen descendants retaining their citizenship rights in *Cherokee Nation v. Nash*.[1]

The language in the draft bill would allow tribal freedmen descendants to have access to NAHASDA funded programs without having tribal registration. It would also create financial incentives for tribal governments and their housing authorities to come into compliance with treaty obligations with respect to descendants of freedmen. Tribal nations in compliance with their treaty obligations would not be affected. Furthermore, as noted above, the language does not affect any of the more than 500 tribal nations which did not go to war against the United States to keep blacks as permanent slaves.

Background and History

The freedmen were persons of African ancestry legally living within the 5 tribes at the beginning of the Civil War – the majority who were enslaved under tribal law. The 5 tribes in 1861 signed treaties with the Confederate states with the continuation of black chattel slavery being the primary reason for the alliance with the confederate states. Although not all tribal members owned slaves, the leadership of the 5 tribes were slaveholders, and the majority of the tribes' wealth was due to the slave based economy. Some of the tribal slaveowners owned hundreds of slaves, lived in mansions, and had large plantations. The 1866 treaties of the Cherokee, Creek and Seminole nations adopted after the Civil War between the tribes and the United States Government ended slavery in the tribes, and set up provisions for tribal citizenship of the freedmen with provisions giving freedmen all the rights of native Indians of their tribal nation. The 1866 Treaties between the Choctaw and Chickasaw nations and the U.S. Government Gave each of these tribes the option to adopt the freedmen, in which case the tribe would receive a payment from the U.S. Government. The Choctaw nation

[1] In ruling in favor of the Cherokee freedmen descendants and upholding the validity of the 1866 Treaty between the Cherokee Nation and the U.S. Government, Judge Hogan found that the Sovereign rights of the Cherokee Nation to determine citizenship remain but that it was limited, as here, by treaty. "The Cherokee Nation is mistaken to treat Freedmen's right to citizenship as being tethered to the Cherokee Nation Constitution when, in fact, that right is tethered to the rights of native Cherokees. Furthermore, the Freedmen's right to citizenship does not exist solely under the Cherokee Nation Constitution and therefore cannot be extinguished solely by amending that Constitution," states Hogan's ruling. "The Cherokee Nation's sovereign right to determine its membership is no less now, as a result of this (Aug. 30) decision, than it was after the Nation executed the 1866 Treaty. The Cherokee Nation concedes that its power to determine tribal membership can be limited by treaty. In accordance with Article 9 of the 1866 Treaty, the Cherokee Freedmen have a present right to citizenship in the Cherokee Nation that is coextensive with the rights of Native Cherokees." Judge Hogan further noted that "[t]he Cherokee Nation can continue to define itself as it sees fit but must do so equally and evenhandedly with respect to native Cherokees and the descendants of Cherokee freedmen. By interposition of Article 9 of the 1866 Treaty, neither has rights either superior or, importantly, inferior to the other. Their fates under the Cherokee Nation Constitution rise and fall equally and in tandem. In accordance with Article 9 of the 1866 Treaty, the Cherokee Freedmen have a present right to citizenship in the Cherokee Nation that is coextensive with the rights of native Cherokees.". Cherokee Nation v. Nash, 25 F. Supp. 3rd 86 (D.D.C. 2017).

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adopted the freedmen in 1883, and received the funds they were entitled to as stated in the 1866 treaty. Tribal freedmen were not entitled to US citizenship under the 14th amendment to the United States Constitution as they were not slaves of U.S. citizens. The members/citizens of the 5 tribes, including freedmen, were not U.S. citizens and did not receive U.S. citizenship until the 1901 Five Tribes Citizenship Act was passed. The Dawes final rolls were made by the U.S. government between 1898 and 1906 to distribute lands of the 5 tribes owned in common to the citizens/tribal members based on agreements between each tribe and the Federal government. The majority of members of the tribes were listed on the "by blood" sections of the rolls with a degree of blood assigned by the Dawes commission. Freedmen/descendants of freedmen of the Five tribes were placed on separate sections of the Dawes rolls without degrees of blood by the U.S. Government largely to have a class of citizens whose allotment land would have restrictions lifted earlier (1904) than other tribal members. A review of tribal membership lists (such as the Cherokee Nation 1880 tribal census) and U.S. government payment rolls (such as the 1852 Cherokee Drennen payment roll), and the 1871 immigration roll of Shawnees who were granted citizenship in the Cherokee Nation by agreement between the U.S., Cherokee and Shawnee tribes show that the 5 tribes and the U.S. government did not have degrees of blood/blood quantum for tribal members before the late 1890s. In the 1926 Oklahoma Supreme Court case *Sango V Willig*, the court makes it clear that a Dawes enrolled Creek freedwoman whose mothers was listed as a ¼ Creek by blood on the Dawes roll is a "non Indian" for allotment purposes (i.e. the date to sell her allotment) but not necessarily for other purposes. As stated in the book, "The Dawes Commission" by national archives administrator Kent Carter, persons of mixed African Indian blood were generally classed as freedmen by the Dawes Commission. The Department of the Interior (DOI) issues certificate of Indian blood cards (CDIB) based on the degrees of blood assigned by the Dawes commission. Descendants of freedmen are unable to acquire CDIB cards for this reason. In the 20th century, the U.S. government began to use the degrees of blood to limit access to tribal services – again divesting the freedmen communities of needed resources.

Need for Congressional Action and Federal Legislation

At the end of the Civil War, written promises were made to tribal freedmen and their descendants – promises which have been broken. Today's descendants of freedmen are denied access to Federal housing programs available to members of Federal tribes in violation of the treaty provisions by tribal governments whose leadership assert tribal sovereignty as sufficient reason to violate the treaty and human rights of the freedmen. However, just as the U.S. Supreme Court determined the U.S. government did not have a unilateral right to break Article 3 of its 1866 treaty agreement with the Muscogee Creek Nation (see e.g. *McGirt v Oklahoma*[2]) the tribes do not have a unilateral right to remove treaty rights from the freedmen. All amicus briefs submitted to the U.S. Supreme Court by the 5 tribes stressed the validity of Article 3 (ceding and conveying the west half of their lands in present day Oklahoma) of the Creek Treaty when it came to the Muscogee Creek Nation retaining its reservation . Article 2 of the treaty (abolishing slavery by the Creek Nation) still remains in effect.

There is no doubt that many descendants of freedmen of the tribes qualify for NAHASDA programs based on income. The lower incomes of freedmen are due not only to current racism but to historic racism where the Federal government assisted in limiting assets of tribal blacks. The Choctaw and Chickasaw freedmen treaty

[2] McGirt v. Oklahoma, *591 U.S. __ (2020); 140 S. Ct. 2452 (2020).*

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allowed these nations to limit freedmen to 40 acre allotments if adopted in sharp contrast to other tribal members, including adopted whites, who received 320 acre allotments. In 1907, Oklahoma became a state without the U.S. Government requiring anti-discrimination laws in the state constitution. The first law passed was Senate Bill 1 which set up Jim Crow segregation laws throughout Oklahoma only for persons of African ancestry – persons without African ancestry were legally white. Establishment of sundown towns in cities such as Henryetta in the Muscogee Creek Nation where all blacks were forced out and the 1921 Greenwood north Tulsa community Race Massacre (Greenwood community is located in the Cherokee Nation reservation) compounded poverty of freedmen citizens. Freedmen citizens such as Attorney BC Franklin -- the father of Historian John Hope Franklin who was a Dawes enrolled Choctaw freedmen -- lost all of their assets in the massacre.

The non-profit Oklahoma Policy Institute in 2010 published a paper showing a significant wealth gap between Oklahoma Native Americans and Oklahoma African Americans with native Americans having a median income of 11,216 below the median come for the state and African Americans having a median income of 18,231 below the state median income. This same survey shows 63.4 % of Oklahoma native Americans owned homes while only 42.7% of Oklahoma African Americans were homeowners. Of course, freedmen descendants were negatively affected by the U.S. government's redlining policies in the past while currently being unable for the most part to participate in the Federal funded Native American programs to increase home ownership. The aiser Family Foundation reports black poverty of 28% in Oklahoma versus 19% for American Indians in 2019. Descendants of Freedmen, due to direct actions by the U.S., state, and tribal governments that have diminished their net worth, have few financial resources to enforce their rights in court or petition Congress for enforcement of 1866 treaty rights.

Impact of the Denial of NAHASDA and Other Federal Benefits on Descendants of Freedmen

As a result of past and current systemic racism, Descendants of Freedmen have substantial needs. While there are too many to name here today, some of the persons who need assistance at the present time include:

- Mr. L. Lovett of Okmulgee – A senior citizen on disability who has had a double lung transplant. He greatly needs rental assistance. He is a Creek freedmen descendant.
-
- Mrs. B. Wilson of Okmulgee – A widowed senior citizen who desperately needs a roof. She has a tarp on her roof right now. She greatly needs housing repair assistance. She is a Creek freedmen descendant.
-
- Ms. W. Rice of Okmulgee – A single mom who works a part-time job and is a student. She needs rental assistance, but would eventually like to receive assistance with a down payment to purchase a home. She went to the Creek Nation to apply for assistance, but was denied due to not being registered due to freedmen status

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Evidence of Ongoing Discrimination and Denial of Federally-Funded Benefits

Seminole Nation of Oklahoma

The ancestors of the Seminole freedmen were an integral part of the nation even prior to the Civil War – serving as warriors, interpreters, and after the Civil War as elected tribal leaders of freedmen political bands. Article 2 of the Seminole Nation 1866 treaty states the freedmen should have all the rights of native citizens. Seminole Nation registers its descendants of freedmen in the tribe, but classifies them as "citizens" rather than "members" and denies them access to services. They are allowed to vote and allowed 4 out of 28 tribal council seats based on the tribal constitution. In 2000, the tribe attempted to remove the freedmen completely through a constitutional amendment, but was blocked by the Department of Interior (DOI), as they did not receive permission from the DOI to remove the freedmen from the tribe. In the DC Federal case *Seminole Nation v. Norton*[3], the court ruling made it clear that the Department of the Interior had not overreached its authority in protecting the Seminole freedmen 1866 treaty rights to tribal membership. Subsequently, the Department of the Interior issued a letter to the Seminole Nation that freedmen qualify for federal services based on membership in Federal tribes (See Exhibit) The Seminole Nation then reissued the freedmen tribal membership cards to have zero ("O")blood quantum on the front and the words "voting privileges only on the back." The Seminole Nation Housing authority uses a point system to determine priority for NAHASDA funded services with fullbloods having the highest number of priority points. In 2015, Seminole Nation Freedmen Tribal Councilwoman Leetta Osborne Sampson and I requested in writing that the office of inspector general and former HUD Secretary Julian Castro investigate the denial of NAHASDA funded services to Seminole freedmen. (Housing policies at that time required a CDIB card and applications from freedmen citizens were not accepted). In 2016, we received a letter from HUD officials that the tribe had changed the housing policy to allow freedmen to apply for housing services. (See Exhibit) The written policy was changed to allow freedmen to apply for the programs in the applications by removing the requirement for CDIB card and adding the words freedmen/citizens as eligible to apply. Despite this change however, Seminole freedmen tribal citizens did not receive Housing services because freedmen were not awarded points and were placed in the same category as members of other tribes. In April 2018, Councilwoman Osborne and I met in Washington D.C. with Heidi Frechette, Director of Office Native American Programs (ONAP) with the Department of Housing and Urban Development's Office of Public and Indian Housing, and explained toMs. Frechette and her colleagues that freedmen tribal members/citizens still were being denied access to NAHASDA funded services. On September 1, 2018, the Attorney for the Housing Authority of the Seminole Nation informed the tribal council in a meeting (available on YouTube) that she had been contacted by HUD and informed that the Seminole freedmen needed to be able to receive NAHASDA funded services. Tribal councilmembers at the meeting raised issues of tribal sovereignty, others stated that federal law limited the programs to CDIB holders, that the freedmen should be satisfied to be included with members other tribes, or that the federal government should do something to fix the problem of the housing for the freedmen and not the tribe. A review of the November 2020 Housing application has removed the Seminole freedmen citizens from being included with members of other tribes and again requires CDIB cards as part of the application – resulting in Seminole freedmen once again being denied the ability to apply for NAHASDA funded services (New_Housing2020.pdf (hasnok.org). I am unaware if

[3] Seminole Nation of Oklahoma v. Norton, 223 F.Supp.2d. 122 (D.D.C. 2002).

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Seminole freedmen have applied to other tribes for housing assistance, but the Seminole Nation has proactively worked to discourage other tribes and Federal agencies from providing federal services such as Indian Health Services to Seminole Nation tribal citizens. For example, the Cherokee nation was told by the Seminole nation that Seminole freedmen did not qualify to be seen at Cherokee Nation medical clinics. The Seminole tribe as of 2021 has approximately 18,800 registered members and citizens, which includes freedmen. Of that number, reedmen citizens account for approximately 3,200 persons in 2021. It is my understanding based on information received from tribal council representatives that the tribe/tribal housing authority submits population including both "members and "citizens" for its Federal funding requests. Notably, by counting freedmen among its total population, the Seminole Nation receive a greater proportion of NAHASDA formula funds, despite the fact that it continues to take affirmative steps to limit and often deny the freedmen access to these federally-funded benefits. I want to emphasize that no tribe is completely sovereign in use of NAHASDA funds and that Seminole Nation elected leaders are aware of this. For example, an Office of Inspector General (OIG) audit report dated September 10,2003 for the Seminole Nation Housing Authority required the authority to repay NAHASDA funds used to purchase land in 2001, which was not appraised prior to purchase and for which an environmental review was not made prior to purchase. Finding (hud.gov)

Muscogee Creek Nation:

Article 2 of the 1866 Creek treaty clearly maintains that the freedmen and their descendants shall have all the rights of native citizens and are entitled to an equal interest in the soil and to share in the funds of the nation – each Creek citizen including freedmen citizens received 160 acre allotments during the Dawes enrollment. https://learn.k20center.ou.edu/lesson/736/Reconstruction%20Treaties%20of%201866%E2%80%94Reconstruction%20in%20Indian%20Territory.pdf?rev=2701

After the Civil War, Creek freedmen served as tribal judges, elected leaders, tribal attorneys, and were leading businessmen. The descendants of these illustrious individuals such as Mrs. K Williams a descendant of Freedmen Judge Jesse Franklin wish to join their ancestors in serving their tribal nations. However, the Creek freedmen and their descendants were disenrolled through a tribal constitution in 1979 which limited tribal membership to descendants of Creeks listed on the Dawes roll by blood section. Freedmen citizens were not allowed to vote on the constitution. Currently Freedmen are being denied services through lack of tribal membership. A 2018 Federal lawsuit filed by officers of an independent non-profit Freedmen organization (neither I or the Descendants Association are affiliated with this organization) to enforce 1866 treaty rights of Creek freedmen was dismissed for technical reasons.[Could it instead simply say Creek Freedmen unaffiliated with the Descendants of the Freedmen of the 5 Tribes?] Muscogee Creek Tribal leaders as well as most candidates for public office have justified the tribes right to discriminate against the freedmen based on tribal sovereignty and or the fact that the DOI approved the 1979 constitution. Although the current Muscogee Creek Nation chief issued a public statement on May 27, 2021 that the tribe should have town halls with public comment to consider revising the tribal constitution to again register freedmen descendants (https://www.nytimes.com/2021/05/28/us/politics/freedmen-citizenship.html) no public meetings have been set to date. A subsequent statement by Chief Hill on social media asserts that freedmen citizenship issues must

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be resolved by the Muscogee people. According to the Muscogee Nation website, the tribal population in 2021 is 86,100. Since the time of the Dawes enrollment, Creek freedmen were approximately 1/3 of the tribal members. By extension, the number of freedmen (if registered in the tribe were permitted) would be approximately 28,000. My conclusion is that the freedmen will continue to be denied services regardless of treaty obligations absent federal intervention.

Choctaw Nation of Oklahoma:

The Choctaw Nation of Oklahoma heavily supported the Confederate States. The tribe did not adopt the freedmen until 1883 and received money from the U.S. government for doing so pursuant to the terms of their 1866 treaty. Freedmen descendants were not allowed to vote on the constitution which disenrolled them in 1983. The freedmen thusly have been denied the ability to access NAHASDA funds due to disenrollment. The Choctaw nation had about 200,000 population in 2021. Based on the freedmen being 1/3 of tribal citizens during the Dawes enrollment, approximately 66,000 freedmen descendants should be currently registered in the tribe. A letter from Choctaw Principal Chief Batton dated June 25, 2020 to Honorable Speaker Pelosi criticizing proposed language in housing bills, which ties the ability of his nation to receive federal housing funds to the tribe honoring 1866 treaty obligations asserted the language would destroy tribal self-determination. Chief Batton stated that the Freedmen issue is a problem caused by the United States, not the Choctaw Nation – completely ignoring the slavery and black codes passed by tribal law prior to 1866, the tribes alliance with the Confederate States, the many years the freedmen were uneducated, stateless people without citizenship in any nation, discriminatory laws in existence after the adoption blocking Choctaw freedmen ability to hold office and intermarry with other tribal members – and the Choctaw tribe insistence on limiting the freedmen tribal members to 40 acre allotments all added to the impoverishment of the freedmen. This is not even addressing the inability of today's Choctaw freedmen descendants to access services available to registered tribal members – which was not a decision forced by the US government but due to tribal disenrollment actions. The Choctaw Nation Housing authority requires CDIB cards to qualify for its programs. Although Chief Batton in May 2021 issued a statement calling for dialogue about freedmen citizenship, no town halls or forums to discuss freedmen citizenship have been held. An Open Letter from Chief Gary Batton | Choctaw Nation. Based on past history, the chances of the tribe living up to its treaty obligations without federal intervention appears almost non-existent.

Cherokee Nation:

The Cherokee Nation, like the other 5 tribes that removed from the southeast United States to eastern Oklahoma, was a tribe which protected chattel slavery during the Civil War – with discriminatory black codes as part of tribal law. The tribe allied with the Confederate states. After the Civil War, the Cherokee freedmen and their descendants received all the rights of native Cherokees under Article 9 of the treaty prior to Oklahoma statehood. Freedmen such as Stick Ross, Jerry Alberty, Ned Irons and Fox Glass served in the tribal council and their descendants such as Mr. L Ross and Mr. M Harrison are active in the tribal community today. After the Civil War, the Cherokee freedmen periodically went to Federal courtto enforce their treaty rights to payments

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and annuities. In recent years, the Cherokee Nation has worked to live up to its treaty obligations to descendants of Cherokee freedmen, especially since Judge Thomas Hogan's order was issued in the *Cherokee Nation V Nash* case in August 2017. In 2021, the Federal order was finalized in the Cherokee Nation tribal supreme court in :*RE: Effects of Cherokee Nation v. Nash and Vann*.

As a result of this federal litigation, I am pleased to report that Cherokee freedmen descendants are being registered in the tribe and are accessing housing assistance programs under the Hoskin administration and previously under the Baker administration. However, I must emphasize to this Subcommittee that this state of affairs did not come about without federal intervention as well as great sacrifices by freedmen and their supporters. I myself spent more than $100,000 in personal funds to ensure that the attorneys were able to continue the Cherokee freedmen cases – this is outside of personal funds used for advocacy. My good friend, Mr. Eli Grayson, an activist who is Creek citizen with freedmen ancestry also spent more than $100,000 in personal funds to advocate and publicize freedmen rights. Former House Financial Service Committee Chairman Barney Frank and his staff worked tirelessly to get freedmen protective language included in the 2008 NAHASDA Re-Authorization legislation. The attorneys on the cases, especially the Velie law firm, expended hundreds of thousands of dollars of legal time – much of which has not been reimbursed – to see the cases through to the end. In 2003, Cherokee freedmen descendants commenced litigation in Federal court on citizenship issues in the *Vann v. Norton* case and, subsequently, the *Cherokee Nation v. Nash* case, as well as in tribal court Under the administration of Principal Chief Chad Smith, the Cherokee Nation spent tens of millions of dollars to dismiss the case(s) on technical grounds, and hired Washington, DC lobbyists in attempt to tell a different history of the freedmen than what is in the historical record. There continue to be office holders and candidates for office who run on anti-freedmen platforms – implying that freedmen citizenship or freedmen rights to hold office is unconstitutional or an abrogation of tribal sovereignty. Some office holders were even involved in illegally obtaining signatures for the freedmen removal petition in 2006. Indeed, there are a number of current councilmembers who argued in tribal court that the Cherokee Nation should appeal Judge Hogan's ruling to the U.S. Court of Appeals for the D.C. Circuit. . A 2019 Chief Candidate who was serving on the tribal council even denied freedmen children school supplies they were entitled to under the Johnson Omally Indian Education program when he worked outside the tribal government as a school administrator in Muskogee. The language in the Housing draft bill will provide extra incentive and insurance against those seeking to deny freedmen their rights. Black U.S. citizens in the deep south did not only depend on the courts to uphold their rights but also sought support of Congress to uphold legal and human rights. The Cherokee Nation has a population of approximately 395,000 tribal members/citizens in 2021, including about 8,500 Cherokee freedmen tribal members. Based on the Dawes enrollment, freedmen registered in the tribe would have been approximately 44,000 – the lower number of currently registered freedmen is a direct result of the moratorium on freedmen registration instituted by earlier tribal leadership.

Chickasaw Nation:

The Chickasaw Nation together with the Choctaw Nation signed a joint treaty with the United States in 1866. The Chickasaw Nation had harsher slave and black codes than other tribes –the tribe had almost no freed blacks at the time of the Civil War. Like the Choctaw Nation, Chickasaw Nation was given the option to adopt the freedmen. During the 1870s, the tribe passed a legislative act to adopt the freedmen, but later rescinded it. I

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believe that the Chickasaw Nation's decision to rescind it resulted in part because of the large number of Chickasaw freedmen. Until the 20th century, the Chickasaw freedmen were stateless people. More than ½ of persons listed on the Chickasaw section of the Dawes rolls were listed as freedmen. The Chickasaw freedmen received 40 acre allotments because there was uncertainty of whether or not they had been adopted by the Chickasaw Nation. Currently, the Chickasaw Nation does not register freedmen as members of the tribe, and requires CDIB cards for federal services. Based on estimated current Chickasaw Nation population of 49,000, approximately 50,000 freedmen descendants would be registered in the tribe based on extrapolation of the Dawes enrollment.

Conclusion

Tribal governments and their housing authorities have received $498 million dollars in additional homeowner assistance funds in 2021 because of the American Rescue Act Plan funding. These funds as well as the prior year Cares act funding allowed tribes to extend social services to members. However, the programs funded are not available to the majority of the freedmen descendants. I ask that you vote to include the treaty obligation language in the final bill and support its passage in the full house. The History of the 5 tribes shows that without federal intervention, the 1866 treaty obligations will not be met. The language of the bill will assist in ensuring that all 5tribes comply with the law. The discrimination and impoverishment endured by the freedmen is not of their own making. There is no question that the qualifying freedmen descendants can be identified and, as appropriate, tribally registered. Descendancy letters can be issued by the DOI for freedmen descendants who are not tribally registered. Freedmen and their descendants as well as other tribal members who did not have CDIB cards were still able to get judgement fund payments during the 1960s. Consequently, the lack of CDIB cards is not an obstacle. Meanwhile, in the case of Seminole freedmen, the Subcommittee could send out letters to the tribal housing authority as well as other tribes and housing authorities and inform them that the tribal membership cards/citizenship cards of Seminole Freedmen make them eligible for NAHASDA funded services.

Prepared Testimony of Anthony Walters, Executive Director
National American Indian Housing Council
to the
U.S. House of Representatives Financial Services Committee, Subcommittee on Housing, Community Development and Insurance
Oversight Hearing on
NAHASDA Reauthorization: Addressing Historic Disinvestment and the Ongoing Plight of the Freedmen in Native American Communities

July 27, 2021

Good Afternoon. My name is Anthony Walters and I am the Executive Director of the National American Indian Housing Council. I am a member of the Cherokee Nation of Oklahoma and prior to my current role have served in numerous staff positions at the Department of the Interior and United States Senate Committee on Indian Affairs in Washington, DC. I would like to thank Chairwoman Waters, Subcommittee Chairman Cleavers and Ranking Member Hill, and all committee members for having this hearing today and for working to ensure the United States is fulfilling its trust and treaty obligations towards Indian Country with respect to providing safe, affordable housing opportunities in tribal communities and to Native people and tribal members anywhere in the country.

Background on the National American Indian Housing Council

The NAIHC was created by tribal housing programs in 1974 and for nearly five decades has provided invaluable Training and Technical Assistance (T&TA) to all tribes and tribal housing entities; provided information to Congress regarding the issues and challenges that tribes face in their housing, infrastructure, and community development efforts; and worked with key federal agencies to ensure their programs' effectiveness in native communities. Overall, NAIHC's primary mission is to promote and support American Indians, Alaska Natives and native Hawaiians in their self-determined goal to provide culturally relevant and quality affordable housing for Native people.

The membership of NAIHC is comprised of 280 members representing 469[1] tribes and tribal housing organizations. NAIHC's membership includes tribes and tribally-designated housing entities throughout the United States, including Alaska and Hawaii. Every member of this Committee serves constituents that are members of NAIHC. It could be directly through tribes and native constituents located in your Districts, but each of you is also tasked generally with upholding the United Sates trust and treaty obligations through the United States' government-to-government relationship with all tribes within the United States. NAIHC's members are deeply appreciative of your work to improve the lives of Indigenous Peoples throughout the Country.

Profile of Indian Country

There are 574 federally-recognized Indian tribes in the United States. Despite progress over the last few decades, many tribal communities continue to suffer from some of the highest unemployment and poverty rates in the United States. Historically, Native Americans in the United States have also experienced higher rates of substandard housing and overcrowded homes than other demographics.

The U.S. Census Bureau reported in the 2019 American Community Survey data that American Indians and Alaska Natives were almost twice as likely to live in poverty as the rest of the population — 23.0 percent compared with 12.3 percent. The median income for an American Indian/Alaska Native household is 30% less than the national average ($45,476 versus $65,712).

In addition, overcrowding, substandard housing, and homelessness are far more common in Native American communities. In January 2017, the Department of Housing and Urban Development (HUD) published an updated housing needs assessment for tribal communities. According to the assessment, 5.6 percent of homes on Native American lands lacked complete plumbing and 6.6 percent lacked complete kitchens. These are nearly four times the national average, which saw rates of 1.3 percent and 1.7 percent, respectively. The assessment found that 12 percent of tribal homes lacked sufficient heating.

The assessment also highlighted the issue of overcrowded homes in Indian Country, finding that 15.9 percent of tribal homes were overcrowded, compared to only 2.2 percent of homes nationally. The assessment concluded that to alleviate the substandard and overcrowded homes in Indian Country, 68,000 new units need to be built.

Since the Native American Housing Assistance and Self-Determination Act (NAHASDA) was enacted in 1996, tribes have built or acquired over 41,000 new affordable housing units and rehabilitated over 100,000 units according to HUD. However, as the appropriations for the Indian Housing Block Grant (IHBG) (established by NAHASDA) have remained level for a number of years, inflation has diminished the purchasing power of those

[1] There are 574 federally recognized Indian tribes and Alaska Native villages in the United States, all of which are eligible for membership in NAIHC. Other NAIHC members include state-recognized tribes eligible for housing assistance under the 1937 Housing Act and that were subsequently provided funding pursuant to the Native American Housing Assistance and Self-Determination Act of 1996, and the Department of Hawaiian Home Lands, the state agency that administers the Native Hawaiian Housing Block Grant program.

dollars, and new unit construction has diminished as tribes focus their efforts on existing unit rehabilitation. While averaging over 2,400 new unit construction between FY2007 and 2010, new unit construction has dropped in recent years with only 2,000 new units between 2011 and 2014, and HUD estimating less than 1,000 new units in future years as tribes maintain existing housing stock over new development.

Current funding levels provide tribes the ability to address just a fraction of the currently identified unmet need each year, and tribal populations continue to grow. It is clear that current funding levels for tribal housing programs cannot fulfill the housing needs of our tribal communities, and thus are not fulfilling the United States trust and treaty obligations to tribes. More must be done to address this historic disinvestment in tribal housing development.

Status of Housing Opportunities for Native Americans

There remains a large unmet need for quality, affordable housing in tribal communities. As members of the committee are aware, there is a housing shortage across the country, and that is definitely true for Native communities. With a lack of consistent data collection year-to-year, NAIHC is largely relying on the American Indian, Alaska Native and Native Hawaiian Housing Needs Study, published by HUD in January 2017. The report identified an unmet need of 68,000 units to address overcrowded and substandard housing conditions. With new housing construction or acquisition fairly stagnant around 1,000 new units per year in tribal communities across the United States, we do not expect the unmet need to have changed. Additionally, many of NAIHC's members have opined that they believe the 2017 Study's unmet need calculation to be underestimated.

The large unmet need is persistent, and largely due to insufficient resources being dedicated to reverse the trends. In 2018, the United States Commission on Civil Rights updated its "Broken Promises" report first released in 2003, and found that housing conditions had deteriorated, with the number of overcrowded households or households with inadequate plumbing growing by 21 percent, and the number of families facing severe housing costs growing by 55 percent.

Despite these trends moving in the wrong direction, Congress has been decreasing the amounts of housing assistance to tribal communities each year through stagnant funding of NAHASDA programs while inflation has grown over the past 20 years. In FY2020, Congressional IHBG formula funding of $650 million provided roughly 2/3 the purchasing power that tribes received at the inception of NAHASDA in FY 1998 ($600 million in FY 1998). Tracking IHBG funding since NAHASDA's passage found that annual appropriations compared to inflation-adjusted levels have caused tribal housing programs to lose $3.4 billion since FY 1998. Recent additions to NAHASDA programs, such as the competitive IHBG funding, are welcome and encouraging, but alone are insufficient to make up for the loss of funding over time.

To put the funding in another perspective, the FY2021 IHBG funding levels provide 379 tribes/grantees with less than $500,000 to operate their housing programs. This funding is

expected to cover housing program overhead costs, to manage a tribe's existing housing units maintenance needs, provide low-income rental assistance, other housing services ***AND*** develop new housing units. Further, 175 of the IHBG grantees received less than $100,000 a year to carry out these activities. While some of the tribes form umbrella organizations to create some efficiencies, it should be easy to see why we're not making much progress against the levels of unmet need.

While the funding of NAHASDA programs continues to be an issue, the program itself has built the capacity of tribal housing programs across the country. Tribes have been able to rely on consistent, dedicated funding through NAHASDA for over 20 years, which has allowed them to create housing programs and develop and train dedicated staff to operate those housing programs. The success of tribal housing programs was evident early on in NAHASDA, when tribes were producing new housing units at rates similar to or higher than HUD was prior to NAHASDA's enactment. NAHASDA has also increased the local control of funding, as it is the tribes themselves that develop their own Indian Housing Plan for their communities. These plans are tailored to the individual tribe's priorities for housing and have provided the flexibility tribes need to carry out their programs.

It is with that upgraded capacity of tribal housing programs provided for by NAHASDA that we can begin to look at the full landscape of federal housing resources and programs. HUD itself has numerous housing programs and resources, some general, some tribe-specific. Tribal programs include the Indian Community Development Block Grant (ICDBG), the HUD 184 Native American Loan Guarantee Program, NAHASDA Title VI Loan Guarantee Program, the formula funded and competitive IHBG programs, and Native Hawaiian programs. Other HUD programs have varying levels of eligibility for tribes, and NAIHC has advocated both to Congress and with our federal partners to improve tribal access to these more national programs. The best example is the HUD Housing Counseling program, which tribes are currently ineligible to apply for, but may soon find themselves subject to housing counseling regulations not tailored for tribal communities. Another example is the Continuum of Care program, which was addressed last Congress by the inclusion of the Tribal Access to Homeless Assistance Act in the FY2021 Consolidated Appropriations Act.

In addition to HUD, tribes can find housing resources at the U.S. Treasury, such as tax credit programs and for COVID recovery purposes, the recently created Emergency Rental Assistance Program and Homeowner Assistance Funds; the U.S. Department of Agriculture and its Rural Housing programs; the Veterans Administration and its Native American Direct Loan Program; and others.

NAHASDA was passed in 1996 to streamline tribes' access to housing program dollars by consolidating multiple programs into a single block grant. However, with the lack of increased appropriations to NAHASDA programs, tribes are again piecing their housing programs together by finding resources from across the federal government. In a 2018 survey conducted by NAIHC, only 17% of our members who responded indicated they were going to utilize non-HUD funds in their programs. So while there are various resources available to tribes, it takes a lot of work to put these pieces together and leverage multiple funding opportunities together, while also operating the day-to-day housing program that serves its tribal members.

Reauthorization of NAHASDA

NAHASDA was last reauthorized in 2008 and expired in 2013. While Congress has continued to provide funding to NAHASDA programs, and even increased some funds in the last few years, there are some programmatic changes that recent reauthorization bills contain that could streamline various aspects HUD and IHBG programs. For example, one long standing fix would address duplicative environmental reviews, which tribes often face when they leverage multiple federal sources of funds. Recent reauthorization bills have also contained provisions to create an Assistant Secretary for Indian Housing to provide enhanced attention at the senior leadership of HUD.

While NAIHC supports reauthorization of NAHASDA, the organization cannot support any provisions (or omissions) that specifically target individual tribes or communities, and which do not have those tribes' or communities' support. NAIHC strongly supports tribal sovereignty and self-governance and therefore NAIHC cannot support provisions that would impact a particular tribe or community if that impacted sovereign tribal nation objects. Similarly, there have been past efforts to reauthorize NAHASDA that would omit a reauthorization for specific current NAHASDA recipients. In those instances, the NAIHC membership has passed resolutions that support NAHASDA reauthorizations only if they include all recipients equally or have the support of the affected recipient.

Further, with respect to the Freedmen issue, NAIHC has long maintained that this is simply not a housing issue, but a question of tribal membership. Membership issues go to the core of tribal sovereignty and self-governance and should be addressed in such a manner, and not in a manner that impedes passage of a bill that affects housing opportunities for low-income families across all of Indian Country.

Comments to draft NAHASDA reauthorization bill

Section 2: NAIHC supports the creation of an Assistant Secretary for Indian Housing. Over the past 20 years, funding for NAHASDA programs have remained stagnant while other program budgets at HUD have continued to grow to accommodate increased costs, inflation and overall prioritization of the nation's housing needs. A Presidentially appointed and Senate confirmed Assistant Secretary would elevate the needs of Indian Country in high-level internal discussions within an Administration and provide greater accountability to Congress and Tribes.

Title I – Block Grants and Grant Requirements: NAIHC supports any effort to improve approval processes at HUD and the streamlining of approvals and waivers related to NAHASDA programs and grants. Tribes would welcome further consultation on Indian Housing Plan requirements and the use of multi-year housing plans. Additionally approvals to exceed TDC maximums is also welcome, as there is ample evidence that building homes in tribal communities simply costs more due to the additional infrastructure needs and construction costs in many rural tribal communities.

While the environmental review language is a welcome step in the right direction, NAIHC believes that the requirement that NAHASDA funds be 51% of the project funding will limit the effectiveness of this provision. Tribes are utilizing funding outside of NAHASDA to carry out many of the larger housing development projects, and thus would still be subject to NEPA requirements for other agencies. Tribes have shown that they can fulfill environment review requirements for housing development projects, and NAIHC recommends that any housing project carried out with the assistance of NAHASDA funds should allow a tribe to carry out a consolidated environment review that satisfies and discharges any federal agencies' specific requirements.

Title II – Affordable Housing Activities: NAIHC supports these provisions as they represent small fixes that tribes have identified over the past decade to add flexibility to their programs. Allowances for tribes to exceed TDC maximums and access IHS Sanitation funds also recognize the higher cost of development in tribal communities and address the need for more resources.

Title III – Authorization of Appropriations: The language used here does not reflect the current Administration's recent budget for tribal housing programs nor recent activity of the House Appropriations committee to provide additional funding for NAHASDA programs. NAIHC would support an authorization cap over current language only if starts the authorization levels at an amount no less than original NAHASDA funding in FY 1998 with inflation factored in since that time (approximately $1 billion) and continues an annual adjustment factor. Additionally, due to the time it has taken to reauthorize NAHASDA, Congress should consider a longer-term authorization found in other reauthorization bills (H.R. 2768, S. 2264).

Title IV – Audits and Reports: NAIHC generally supports efforts to improve transparency and to provide certainty in timelines of audits and report reviews by HUD.

Title V – Other Housing Assistance for Native Americans: NAIHC has long advocated for additional resources for tribal housing programs and appreciates efforts of Congress to provide tribes equal access to other federal housing resources. NAIHC fully supports efforts to make the HUD-VASH program permanent and available to all tribal communities. Similarly, set-asides from USDA Rural Housing program funding and access to HUD Housing Counseling grants would provide much needed resources that are currently available on a national scale, but have so far have not reached tribal communities effectively.

Authorizations to both the 184 Loan Guaranty and competitive IHBG grant programs should be re-assessed for length of authorization and also to ensure they coincide with current funding levels proposed by both the Administration and Congress. For example, the latest House Appropriations measure for the IHBG competitive program provides $150 million for FY22, higher than the authorization found in this draft bill.

NAIHC does support the provision found in Section 502(b) of the draft bill, which would promote tribal sovereignty and tribal court jurisdiction.

Title VI – Miscellaneous: With the exception of Section 604 of the draft bill (due to concerns outlined above), NAIHC supports these provisions as all have been long-standing

recommendations by tribes to support development in tribal communities. Particularly, Section 603 would create parity between states and tribes with respect to application of the National Flood Insurance Program requirements for housing development projects.

Title VII – Housing for Native Hawaiians: NAIHC supports reauthorization of housing programs for Native Hawaiians, but authorization levels and length should be re-assessed similarly to recommendations above for IHBG and 184 authorizations.

NAIHC is appreciative of the efforts to reauthorize NAHASDA and improve tribal housing opportunities through other programs and resources. NAIHC may have additional comments related to the draft bill after further review.

Other Improvements to existing Housing Programs

Make HUD-VASH Permanent and Expand to All Tribes: Currently, only 26 tribes have participated in the Tribal HUD-VASH program, which provides both housing and supportive services to tribal veterans and their families that are homeless or at-risk of homelessness. HUD-VASH is another example of a larger, national housing program that originally left tribal communities out when it was created in 2008. Congress expanded the program through a tribal demonstration project beginning in FY 2015. The program has identified obstacles, such as the lack of housing stock in tribal communities to house veterans through the program and the need for greater supportive services from the VA to native veterans in tribal communities. Many of the tribes participating in the pilot have found ways to provide these supportive services through various partnerships between the VA and tribal or IHS professionals and tribes may be more able to secure housing units for the program if it was made permanent and tribes had more certainty for future funding of the program.

It is well known that Native Americans have served in the United States Armed Forces at higher rates than any other demographic, so it is vital that Native veterans are provided the support they deserve and have earned through their service. Native veterans are not limited to the 26 tribes that have participated in the program, and we look forward to working with Congress to ensure the program is expanded to include all tribe and their veterans. The full Senate has passed the Tribal HUD-VASH Act in each of the last two Congresses and has faced some obstacles in the House. NAIHC will continue to work to address any outstanding issues to make sure HUD-VASH is made permanent and working for all tribal communities.

Restore Access to section 8 vouchers: Prior to NAHASDA, many tribes had been receiving tenant-based vouchers to provide low-income rental assistance to members in tribal communities. With NAHASDA providing the single block grant to tribes, NAHASDA expressly restricted tribes from accessing vouchers moving forward. However, with NAHASDA funds remaining stagnant (or decreasing due to inflation), tribes find it difficult to provide the same low-income rental assistance year-to-year or to expand that assistance as new housing units come online in their communities. Congress routinely adds vouchers to the larger national program to keep pace with the need, or to fund existing vouchers adequately each year, while tribal programs have no similar mechanism. Removing the restriction on section 8 vouchers would free

up tribal funds to focus more on new housing development, as tenant assistance would be available on the back-end of construction. While the restriction should be removed entirely as would be provided under the American Housing and Economic Mobility Act, past NAIHC resolutions have called for the specific restoration of vouchers for LIHTC projects in tribal communities, as the two programs work together well in the non-tribal setting but are more complicated due to tribal financing of similar projects.

Section 184 Loan Guarantee Program: The 184 Loan Guarantee program helps a tribe or tribal member secure a mortgage for an existing or new-construction home by providing a loan guarantee to a private sector bank or lending institution. While the program is targeted to tribal communities and nearby service areas, the program has struggled to incentivize mortgages on trust lands in tribal communities, where many families reside on land their families have held for generations. Obstacles include a slow and burdensome title process involving the Department of the Interior's Bureau of Indian Affairs which disrupts lenders' general preference to work with the more familiar property held "in fee". Improvements include streamlining the process at the BIA; encouraging more private lenders to participate in the program generally and participate through mortgages specifically on trust lands; and encouraging more banks to pick up these guaranteed mortgages in the secondary market thus freeing up the original lenders capital to issue more mortgages.

State housing programs and passthroughs: Several federal programs, notably the Low Income Housing Tax Credits and the Housing Trust Fund, establish funds or processes that operate at the state-level. While many of these states utilize the unmet housing needs in tribal communities to improve their allocations, there is not necessarily a mechanism that requires the states to prioritize tribal areas in receiving the final benefit of these federal housing programs. The result is a mix of effectiveness of these programs in tribal communities, where the relationship between state and tribal officials can greatly affect the final impact of these programs for tribes. In states where we see tribal or rural areas receiving some type of allocation or increased application scores, tribes have been successful in developing new projects with these federal funds.

However, there is often a blind eye turned to tribal communities (and not always intentional) as state programs often believe tribal housing issues are a federal issue, or that the tribe can rely on direct federal funding. This is not unique to states, as even non-HUD federal housing programs can omit tribal communities, believing that tribes can rely solely on NAHASDA or BIA programs to meet their community housing needs.

Training and Technical Assistance: The current model of TTA to tribal housing programs requires tribes to submit requests to HUD offices. Those requests are then analyzed and then submitted to national or regional TTA providers, of which NAIHC is one of several. However, the model likely discourages tribes to request TTA as they would be submitting requests to the same federal agency that oversees their program implementation or funding. NAIHC believes that providing more flexibility to the TTA providers to receive and respond to tribal TTA requests directly can improve the delivery of those services and encourage tribal housing programs to actually address their training needs.

Improve the Effectiveness of non-HUD housing programs in Indian Country: As stated above, there are several federal housing programs established outside of HUD. While these programs are often national in scope, the lack of attention paid by these programs to tribal communities often limits their impact for native families. For instance, USDA Rural Housing programs are tailor made for rural areas, and often are targeted to low-income families, yet their reach to tribal communities has been limited. Often this is due to USDA program staff not geographically located near the tribal community or limited outreach to families in those tribal communities. We're often asking our overburdened tribal housing professionals to know the USDA programs well enough to connect those families with USDA resources. A recent pilot project in South Dakota has allowed the USDA 502 Single Family Home Loan program to lend to Native CDFIs as intermediaries, while those Native CDFIs carry out the lending directly in tribal communities. This has been successful, with the Native CDFIs largely maxing out their mortgage lending with the funding available under the pilot. This on-the-ground presence in tribal communities as well as the comfort level of native families working with native housing professionals has allowed more native families to access USDA resources. This model could be expanded both throughout USDA Rural Housing programs and through other federal housing programs, such as the VA's Native American Direct Loan Program. The NADLP program only have 7-10 staff to market the program and serve Native American veterans in all 574 tribal communities across the country. As a result of the lack of presence of that program, very few mortgage loans are provided to Native veterans each year.

Further incentivize private investment in tribal communities: Indian Country is almost always last to receive the attention of private, commercial banking. The lack of economies of scale in tribal communities, increased development costs, and the complexities of tribal lands and communities (both actual and perceived) simply lead private banking to avoid tribal areas. While there have been national tax credit programs or other incentives available for years to spur development in underserved areas, the programs have generally been less effective for Indian Country. Strengthening incentives for development in Indian Country or creating specific set-asides or mandates through these programs is needed to ensure that tribal communities are not left further behind.

Including Indian Country in Infrastructure Packages: Development costs are higher in Indian Country. The rural nature of most tribal communities and the lack of pre-existing roads, water, electricity and other infrastructure increase the cost of developing new housing. As Congress works to address the infrastructure needs of the entire nation, it must recognize the lack of infrastructure funding over decades to tribal communities and include Indian Country appropriately. While NAIHC believes infrastructure should include housing resources directly, any investments in infrastructure in tribal communities will improve tribal housing programs' ability to plan and develop new housing construction in the future.

Impacts of COVID on Tribal Housing

Finally, the COVID-19 pandemic has also highlighted how far behind we are in meeting the housing needs of Indigenous Peoples of the United States. The housing shortage in tribal communities causes high levels of overcrowded homes. The 2017 HUD Assessment estimates

that 1 in 6 homes in Native communities suffers from overcrowding, which is eight times the national average. It is not uncommon for three or more generations to live under the same roof. These overcrowded conditions do not allow families to practice safe social distancing that is necessary to prevent or reduce the spread of a virus like COVID-19.

The 2017 HUD Housing Needs Assessment also found high rates of substandard plumbing in 5.6% of tribal homes, which is 4 times the national average. This lack of access to clean water in many homes means families can't practice the basic safety precaution of adequate hand-washing and other sanitation practices. With these issues affecting tribal homes at higher rates, it is no wonder that rates of infection of COVID-19 are 1.7 times higher than non-native demographics.

To its credit, Congress has recognized the impacts of COVID-19 on tribal communities and passed a number of relief packages that include new resources for tribes and tribal housing programs. Unfortunately, new homes cannot be built at the snap of a finger, and years of inadequate funding for tribal housing and infrastructure have left tribal communities and families with few options to respond to the immediate impacts of COVID-19 or prevent its spread.

Through the CARES Act last spring, tribal housing programs were provided $200 million of Indian Housing Block Grant funds, in addition to annual appropriations. Unfortunately, $200 million for just under 600 grantees does not go far to address the immediate impacts of COVID-19 on tribal housing. Over half of those grantees received less than $100,000 in additional funds to respond to their communities' housing needs under COVID-19. As development of new units and infrastructure often takes months or years of planning, tribes have been forced to acquire new housing units for short- or long-term use. However, many tribes are located in areas where the availability of new units is very low or of substandard quality and needing improvement. NAIHC understands that tribal approaches to address their local needs have varied across the country. Some tribes were able to utilize other tribal community buildings, in some cases including hotels or casinos, to alleviate overcrowded conditions or to use as makeshift quarantine facilities. Many tribes also provided increased rental assistance to families to allow families to separate into multiple homes. Where local units were unavailable, some tribes have had to help tribal members find housing in nearby towns away from tribal centers, sometimes 50-100 miles away.

The CARES Act also provided $100 million for emergency grants under the Indian Community Development Block Grant. These funds were provided to 96 tribes. According to a HUD press release, these grants helped provide for the construction of new rental housing to address overcrowding and homelessness; the construction of water infrastructure, including water wells and water lines; the purchase and renovation of an old clinic facility to facilitate access to testing, diagnosis, and treatment of Tribal members; and the provision of emergency food supplies to geographically isolated communities.

With the passage of the American Rescue Plan, tribes will see another $450 million in Indian Housing Block Grant funding and $280 million emergency grants under the Indian Community Development Block Grant. NAIHC expects that this additional round of funding will provide for even greater development or acquisition of new units beyond what was provided

by the CARES Act. One large concern we have heard from tribes, and the larger housing industry, is that COVID-19 had disrupted construction materials pipelines and building contractors in a way that has caused a sharp spike in costs of construction.

Congress has also provided substantial set-asides to tribal housing programs specifically for rental assistance, utilities, and now mortgage assistance in tribal communities. These funds will be able to help thousands of families and individuals in tribal communities across the country. Combined, the $1.3 billion in rental and mortgage assistance funds provided to tribes is roughly twice the annual funding provided under NAHASDA. Tribes and the NAIHC are still working with the Treasury Department to ensure that these funds are flexible enough to be fully effective in tribal communities.

While tribes appreciate the additional resources provided by Congress over this past year, the historic disinvestment in new housing developing in Native communities over the last 20 years cannot be reversed overnight. COVID-19 has put a spotlight on the extreme housing shortage in Indian Country. NAIHC hopes the disparate impacts of the COVID-19 pandemic in tribal communities spurs Congress to work with Tribes and tribal housing programs to address these long-standing housing needs in a way that both prevents a future pandemic from running rampant in our communities and more directly provides equitable housing opportunities for Native American, Alaska Native and Native Hawaiians.

Conclusion

NAIHC wants to thank the members of this Committee for holding this important hearing and we want to thank all the members of Congress who have introduced and sponsored bills and supported efforts to improve NAHASDA and other housing opportunities in tribal communities. Tribes have consistently shown how far they can stretch their housing dollars to help the most members of their community as possible, and NAIHC and tribal housing programs look forward to working with our partners in Congress and Federal agencies to continue building safe, affordable housing in our communities.

Muscogee Creek Indian Freedmen Band

Written Statement of

Rhonda K. Grayson
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Descendant of Creek Freedmen Dawes Enrollee
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Muscogee Creek Nation

Before the U.S. House of Representatives: Financial Services Committee

Subcommittee on the Housing, Community Development, and Insurance
Hearing on NAHASDA Reauthorization Addressing Historic Disinvestment and the Ongoing Plight of the Freedmen in Native American Communities

Tuesday July 27, 2021

Greetings, Congressman Emanuel Cleaver, the Chair of the Subcommittee on Housing, Community Development and Insurance, and the Ranking Member French Hill on convening this hearing on to address the "Ongoing Plight of the Freedmen in Native American Communities."

I want to thank Congresswoman Waters and her staff for the countless meetings and phone calls regarding the Creek Freedmen's plight for citizenship.

The Muscogee Creek Freedmen were citizens of the Muscogee Creek Nation who were placed on the Creek Freedmen Roll. This classification included people of African descent who were:

1. Enslaved or owned by citizens of the MCN
2. Free Blacks living as citizens of the Creek Nation.

3. Mixed blood Creeks of African descent listed as Creek Freedmen on the Dawes Rolls.

Regardless of their "blood" status or roll placement, the Freedmen and their Descendants "shall have and enjoy all the rights of native citizens" Pursuant to Article 2 of the Creek Treaty of 1866 between the United States and the MCN. (Note: *Between 1867 and 1895, the MCN created numerous rolls of its citizens. These rolls did not list a blood quantum or single out the Creeks of African descent, free blacks, or the formally enslaved African Creeks emancipated by the Creek Treaty of 1866.)*

Creeks adopted the American custom of plantation Chattel slavery as a labor force. There were enslaved Africans owned by MCN citizens and MCN citizens of African descent, and free Blacks openly livings as citizens of the MCN. All were forced removed pursuant to the Indian Removal Act of 1830 from their traditional homelands in Alabama and Georgia to Indian Territory, current-day Oklahoma. This removal is known as the Trail of Tears.

We stress that there were people of African descent who suffered the same loss as the so call "Indians " on the trail of tears to Indian Territory; our people, the people of "African descent," also died on the way to Indian Territory due to exposure, disease, and starvation. That is the piece of history that is often never discussed.

During the Civil War, the Muscogee Creek Nation citizens fought on both the Union and Confederate. At the end of the Civil War, the United States and Muscogee Creek Nation signed the peace Treaty of 1866, which required the cession of 3.2 million acres of land and granted full citizenship to Freedmen.

The 1866 Creek Treaty-Article 2. The Creeks hereby covenant and agree that henceforth neither Slavery nor involuntary servitude, otherwise than in the punishment of crimes, whereof the parties shall have been duly convicted in

accordance with laws applicable to all members of said tribe, shall ever exist in said Nation; and inasmuch as there are among the Creeks many persons of African descent, who have no interest in the soil, it is stipulated that hereafter these persons lawfully residing in said Creek country under their laws and usages, or who have been thus residing in said country, and may return within one year from the ratification of this Treaty, and their descendants and such others of the same race as may be permitted by the laws of the said Nation to settle within the limits of the jurisdiction of the Creek Nation as citizens [thereof,] shall have and enjoy all the rights and privileges of native citizens, including an equal interest in the soil and national funds, and the laws of the said Nation shall be equally binding upon and give equal protection to all such persons, and all others, of whatsoever race or color, who may be adopted as citizens or members of said tribe.

In 1867, the Muscogee Creek Nation (MCN) citizens adopted a written constitution that followed the provisions of Article 2 of the 1866 Treaty, which called for a Principal Chief, Second Chief, the judicial branch. The bicameral legislative system comprised of a House of Kings and a House of Warriors, which included the Freedmen (what we know today as our U.S. Legislative system, the Senate, and House Representative).

Black Creeks or Freedmen (The term Freedmen was not a term used until the late 1890s and was given by the government). It is worth noting that there were free men and women of color living in the Creek Nation. My family and most African descent people identified as "Creeks" or Black Creeks or, as my grandfather would say, "Native Negro's or State Negro's. They identified differently culturally from the people know as "State Negro's.") Black Creeks or Freedmen served in the House of Kings and the House of Warriors. Our ancestors served as Senators, Judges, lawyers, Lighthorse police, and the principal chief of Creek Nation, etc. One such example is Chief Perryman. As described in the Extra Census Bulletin, *"The principal chief, virtually a Negro, comes of a famous family in creek annals his Name is Leguest Choteau Perryman., "The negroes are among the earnest workers in the Five Tribes. The Creek Nation affords the best example of negro progress. The principal*

chief, virtually a negro, comes from a famous family in Creek annals. His Name is Leguest Choteau Perryman". Department of the Interior Census Office, Washington D.C., United States Printing Office, 1894."

There are far too many stories to mention about the Creek Freedmen serving the Creek Nation in essential roles in government and in the community. However, a few examples are Mikko Cow Tom; he was a signer of the 1866 Creek Treaty/ Interpreter), Judge Henry Reed, Harry Island (Interpreter), and Jesse Franklin (Supreme Court). Sugar T. George served on the House of Kings and in the House of Warriors, what we know today as the House-Senate and the House of Representatives. He served as prosecuting attorney and was said to be the wealthiest Black Creek Freedman in the Nation. He served in Union Army in company "H" of the 1st Indian Home Guard. He served on the board of the Tullahassee Mission School, a school for Creek and Seminole freedmen, to name a few. We would argue that the Creek Nation literally would not be what it is today without the bloodshed and tears of the Creek Freedmen who served their Nation faithfully only to be disenfranchised years later.

Dunn Roll was to identify citizens entitled to payment. Listed on the Dunn roll were all citizens, Native Creeks, and Freedmen. Three Freedmen's districts/towns were established for political and economic purposes: North Fork, Canadian, and Arkansas. The Colbert Commission was established to authorize, summons witnesses, take testimony, and decide and approve citizenship cases.

Curtis Act in 1898 allowed the government to terminate the MCN tribal government by taking away ownership of the land, which had been held in common, and replacing it with individual ownership of 160 acres of land per citizen. The establishment of the Dawes Commission by Congress was to identify and enroll citizens eligible for allotment. All creek Freedmen received the same amount of land as someone who was considered a full-blood Indian. They all received 160 acres of land as full citizens of the Creek Nation. All were on equal footing.

The Curtis Act directed the Dawes Commission to divide the MCN by creating two separate rolls: 1) the "Creek Nation Creek Roll or Creek Nation Indian Roll." Blood quantum was intended to be used for land allotment purposes only. For example, "In cases of mixed Freedmen and Indian parents, which was common among the Creeks…the applicant that was enrolled as a Freedmen was not given credit for having any Indian blood. *See Kent Carter.* The blood quantum was never intended to be used by tribes years later to determine who could be members of the various tribes. It was for land allotment purposes only!

There were factions within the tribe that sought to eliminate the Freedmen. *"In 1938, a memorandum was sent to the Solicitor, the Department of Interior, Nathan Margold, by John Collier, Commissioner, on behalf of the Five Tribes, "Question: They wanted to find some way to eliminate the Freedmen." And "The status of these Freedmen, would the Freedmen be entitled to vote on the adoption of a constitution." In 1941, Nathan Margold answered and stated that "Creek Freedmen were adopted as full members pursuant to the Treaty of June 14, 1866 (14 Stat. 785). "*

On October 29, 1977, Principal Chief Claud Cox stated that the express goal of the 1979 Constitution was to strip Freedmen and Creek Freedmen Descendants of their MCN citizenship and rights. *"When you go back to the old [1867] Constitution, you are licked before you start; because it doesn't talk about Indians, it talks about citizens of the Creek Nation. When you got down to the Allotment time, there were more that was non-Indians or half-blood or less, who outnumbered the full blood, all these totaled about 11,000, and there were only 18,000 on the entire Roll; so, there was only 9,000 above One-half blood. That's the reason they lost control; the full-bloods lost control. That's what we are fighting, this blood quantum, trying to get back and let the people control because under the old constitution, you've lost before you ever started. There were three Freedmen bands that would outnumber you today, as citizens. So, if we want to keep the Indian in*

control, we've got to take a good look at this thing and get us a constitution that will keep the Creek Indian in control."

In 1979, the Muscogee Creek Nation decided to divest themselves of the Freedmen with the adoption of a new Constitution and election. As per the Treaty of 1866 article 2, Freedmen are citizens by Treaty and have a constitutional right as citizens of the MCN to vote in all constitutional elections. By in large, the problem is that the Freedmen were not permitted to vote in this election and were said to have been voted out; however, the Treaty has not been abrogated and is still good law. The landmark Supreme Court case MirGirt has affirmed that the Treaty of 1866 article 2 is still good law.

As a result, the Freedmen descendants have lost their citizenship, identity, rights to run for political office, voting rights, Indian housing, educational grants, health Care, COVID stimulus relief funds, and other federally funded programs. More importantly, a sense of loss of belongingness and pride of being a part of a community you have had ties with for generations—a community where our ancestors served in critical roles and fought for the wellbeing of the entire MCN. Yet, we are no longer welcomed to the Nation of our ancestor's birth.

The Treaty of 1866, Article 2, has not been abrogated or amended, and the new Constitution of 1979 violates the Treaty, which is the supreme law of the land. Members of the MCIFB are in active litigation pursuing citizenship within the Muscogee Creek Nation.

From 1979-to the current day, Creek Freedmen descendants have been advocating for their citizenship rights through litigation, seeking relief from Congress and the Department of the Interior.

The most recent citizenship lawsuit filed 2018 in the United States District Court for the District of D.C. against the MCN and DOI on behalf of the

Muscogee Creek Indian Freedmen Band for the denial of citizenship due to anti-black racism and the DOI's breach of its fiduciary duty to protect the citizenship rights of the Creek Freedmen based on the 1866 Creek Treaty. The court dismissed the lawsuit without prejudice, pending the exhaustion of remedies in tribal court. I also filed administrative appeals with the MCN, which was also denied.

There is currently a motion for summary judgment pending in the MCN (Muscogee Nation) court that the MCN refuses to appoint a judge. We have had two judges recuse themselves from the case.

I believe the MCN is delaying the case to prevent the Creek freedmen from refiling in the U.S. Federal court. The MCN is stalling for time because they know they must look at history; the history will uncover the truth of how our lives intertwined so closely with the MCN, and they know the outcome: history and the Peace Treaty of 1866 are on our side.

We need the DOI and Congress to step in as we have no faith the MCN will uphold the 1866 Treaty without a Federal court mandate. We have sought relief from Congress in the past. With HR 1514, a bill in the 116th Congress was introduced by Congressman Danny Davis. The language in the Bill is to sever United States Government relations with the Creek Nation of Oklahoma until such time as the Creek Nation of Oklahoma restores full Tribal citizenship to the Creek Freedmen disenfranchised in the October 6, 1979, Creek Nation vote and fulfills all its treaty obligations with the Government of the United States, and for other purposes. Unfortunately, the Bill did not receive any co-sponsors. We, however, have been successful in working with the congressman staff to reintroduce the Bill in the 117 congresses under H.R. 4637. We are asking that the CBC and members of Congress co-sponsor this Bill.

In addition, Section 604 is an essential addition to the NAHASDA language to include all Freedmen of the five tribes. The MCIFB is honored to have been included in the sessions. It has been a pleasure working in concert with

congresswoman Waters team, and we are most grateful for the support and zeal to affirm the citizenship rights of the freedmen. We ask that the committee support and vote to include the language added in section 604 to the NAHASDA Bill, which would protect the Freedmen if the tribes were found to not comply with their 1866 article 2 treaty obligations.

SEC. 604. COMPLIANCE WITH TREATY OBLIGATIONS. 16 The Secretary of Housing and Urban Development 17 shall withhold all or partial funds to a tribe or tribal entity 18 under this Act if, after consultation with the Secretary of 19 the Interior and the tribe, the Secretary determines prior 20 to disbursement that the tribe is not in compliance with 21 obligations under its 1866 treaty with the United States 22 as it relates to the inclusion of persons who are lineal 23 descendants of Freedmen as having the rights of the citizens 24 of such tribes, unless a federal court has issued a final 25 order that determines the treaty obligations with respect

We have members who live below the poverty level and need housing assistance, health care, dental, medical, childcare assistance, education assistance, small business grants, drug and alcohol substance abuse support, mental health care, etc. The need extends beyond Hud and housing,

We/Creek freedmen and the descendants have been in this fight for decades. Our members are wearied, and many are dying off. We want to receive justice and restore citizenship before more of our older members pass over to glory. We have lost faith in the justice system, and we do not believe the MCN will honor the 1866 Creek Treaty law. We have heard rumors about possible discussions from the MCN on the citizenship issue about the Freedmen. We do not believe that will happen; in hindsight, there is no need for meetings unless it is a serious meeting to discuss reenrolling the freedmen, atoning for the years that the MCN has dishonored the wishes of the MCN ancestors. The Treaty, as stated, is the supreme law of the land, and the Supreme Court has ruled that the 1866 treaty has not been abrogated. The MCN should immediately affirm the Creek Freedmen Descendants' citizenship rights and follow the ruling in the McGirt case.

Profoundly, we pray that the Muscogee Creek Nation will follow in the footsteps of the Cherokee Nation, *"The CNO ordered that the words by blood are void, were never valid from inception, and must be removed from their tribal law when said words are used in reference to the Dawes Rolls. In doing so, the court recognizes the importance of the 1866 Treaty for purposes of our Nation's prospective sovereignty and the underpinnings of citizenship," today's Cherokee Nation Supreme Court order states."*

I was so proud of the Cherokee Nation, and Chief Hoskin, Jr. Chief Hoskin, Jr. is a beacon of hope for the Cherokee Freedmen and a model of what reconciliation and atonement look like for all the tribes. I pray that the MCN, The Citizenship Board, the National Council, the AG, and Chief David Hill will stand on the right side of the law. This year marks 155 years of the signing of the Creek treaty of 1866; it is time to honor the wishes of the Creek Nation ancestors and uphold the treaty obligations. The Treaty has not been abrogated or amended. We expect the MCN to follow the law and honor the Treaty of 1866 as the CNO has done, and as the MCN expects the U.S to honor their treaty obligations.

On July 9, 2021, Principal Chief David Hill proclaims the first anniversary of the McGirt historic Supreme Court decision, proclaims July 9 as "Muscogee (Creek) Nation Sovereignty Day" at the Muscogee Nation.

Principal Chief David Hill and Muscogee Creek people like us have much to celebrate with the recent Supreme Court ruling in the *McGirt* case. This historic supreme court decision affirms that the Creek Freedmen's citizenship as outlined in the same Treaty in article 2 has not been abrogated. Article 3 of the Treaty of 1866 affirms that the reservations have never been disassembled. The Treaty of 1866 has not been abrogated, and the Supreme court has affirmed that the Treaty is still good law; thus, articles 2 and 3 are active articles of the 1866 treaty.

However, what is missing from recent discussions and the July 9, 2021, celebration is the untold story, our story, of bitter racial discrimination, a story tragically missing from the entire national conversation about the recent landmark case.

I/We are the proud descendants and the successor of interest to the original Creek Freedmen, AKA Black Creeks. Before the Civil War, the Muscogee Creek Nation (MCN) participated in chattel Slavery and enslaved some of our ancestors. Article Two of the very same Treaty of 1866 that Justice Gorsuch enforced and honored in the *McGirt* decision also freed our ancestors from MCN slavery and mandated their full MCN citizenship and privileges. As stated previously, our ancestors and our fellow Freedmen became full and productive citizens of the Creek family. Sharon Lenzy-Scott's great-great-grandfather, **Sandy Perryman**, came to I.T. in 1832. He was an Interpreter for MCN, and Sharon's blood relative Legust **C. Perryman**, a Principal Chief of the Nation. My great-great-grandmother **Adeline Boxley-Grayson** spoke Creek fluently and only attending the Indian church. My 4th great Grandfather Peter Wolf (AKA Little Peter), was listed on the Loyal Creek payment Roll following the Civil War. My great-grandmother **America Cohee-Webster was a Dawes enrollee of the MCN.** Jeffrey Kennedy's 3rd great Grandfather's Name was **James Grayson,** and his **Indian Name was "Chinny Chotkey,"** he was Half Creek Indian and Half colored. He married a Black Woman by the Name of Venus; he came to the Indian Territory in 1828 and died at Sodom, Indian Territory; Jeffrey's Great-grandfather Benjamin Grayson **was a Dawes enrollee of the MCN**.

During the Dawes enrollment era, any Creek citizen believed to have "one drop of Black blood" was placed on the Creek Freedmen roll and forever stamped with the ugly badge of Slavery.
Then, suddenly, in 1979, using the same badge of Slavery, MCN voted to remove the entire so-called Black Creek Freedmen population and us from the Nation, denying us and all future generations future Creek citizenship. This modern-day apartheid practice, right here in the United States, was made even more shocking because the MCN denied my great grandmother

America Cohee-Webster and all other Black Creek's ability to vote in the 1979 election that eliminated our rights and citizenship.

I often wonder how my great grandmother must have felt, having been born in 1888 in Creek Nation, living her whole life as a citizen of the MCN and a Dawes enrollee. Then, suddenly one year before her death and 92nd birthday, without any warning, she was exiled from the Nation of her birth because of her skin color.

Like other Creek Freedmen, my great-grandmother had committed no treason, no crimes against the Nation of their birth, but discarded like trash. Now, I ask you to imagine the same scenario of being disenfranchised or exiled from the Nation of your birth. You had committed no crimes or treason. Where do you go from here? How does one heal from the trauma and the phycological effects?

In the last 40 years, we, too, have never given up on our rights to Creek citizenship and rights. We have continued to fight to enforce *our birth and* Treaty rights, just as Mr. Hill celebrates fighting for MCN Treaty rights. We have fought in the halls of Congress, the board rooms of MCN, and in both Federal and MCN Courts, and financially we have spent a small fortune on this cause for freedom. Yet, every step of the way, MCN leaders have used their vast resources to fight against us. We have even tried to open civil dialogue with MCN elected leadership to no avail.

On June 27, 2020, we held a series of Town Hall meetings to restart the conversation considering the then pending decision on the McGirt court proceedings and invited MCN leadership to participate…Our invitation went unanswered, and they have over the years went unanswered when we have reached out.

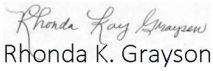
We have watched as people worldwide raise their voices to say Black Lives Matter and wage a battle to eliminate anti-Black racial discrimination

wherever it exists. We stood and stand with our brothers and sisters across the Nation. In Oklahoma, however, Black Creek lives also matter. The time is now to eliminate all remnants of the stain on humanity that was Slavery. The time is now for MCN to honor all articles of the Treaty of 1866, restore the civil rights of the Black Creeks, and affirm that racism will not be tolerated in MCN. Then, and only then, will we all be able to rejoice in Creek sovereignty.

The MCIFB officially incorporated in Oklahoma in 2009, but members of the executive board have been a dominant presence in the community fighting for the Treaty Rights of all Creek Freedmen since before 2002. We have sought to preserve and protect the unique history and culture of the Creek Freedmen (AKA Black Creeks).

In closing, we have protected our history by educating the public through various platforms such as conferences, genealogy workshops, speaking engagements, cultural programs, and a traveling history.

Best regards,



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Before the U.S. House of Representatives: Financial Services Committee

Subcommittee on the Housing, Community Development, and Insurance
Hearing on NAHASDA Reauthorization Addressing Historic Disinvestment and the Ongoing Plight of the Freedmen in Native American Communities

Tuesday July 27, 2021

INTRODUCTION

Pursuant to Article II of the Creek Treaty of 1866 between the United States and the Muskogee Creek Nation of Oklahoma (hereinafter referred to as "MCN"), the Freedmen and Freedmen Descendants, regardless of their "blood" status, "shall have and enjoy all the rights and privileges of native citizens" of the MCN. *Creek Treaty of 1866, Art. 2, June 14, 1866, 14 Stat. 785, 1866 WL 18777* (hereinafter "Treaty of 1866"). However, since 1979 MCN has perpetuated race-based discrimination and the badges of slavery by using me, my clients' and other Creek Freedmen Descendants' African ancestry to deny them the rights and benefits of MCN citizenship. MCN has excluded Creek Freedmen and their Descendants from the rights guaranteed by the Treaty of 1866, including, but not limited to, the rights of citizenship, to vote, to hold office, and to be recognized for who they are: MCN citizens by birthright, heritage, history, and culture.

This is why Creek Freedmen desperately need this Committee to support legislation and executive action that severs the U.S. Government's relations with MCN until MCN restores full citizenship rights to Creek Freedmen as required by Article II of the MCN Treaty of 1866. Specifically, I ask this honorable committee to support Congresswoman Maxine Waters' (D-CA) language that would prevent MCN from receiving any benefits from the 2021-2022 NAHASDA Reauthorization until Black Creek Indians/Freedmen citizenship rights are fully and completely restored by MCN.

HISTORY OF MUSCOGEE CREEK NATION AND THE CREEK FREEDMEN

For at least four centuries, the MCN included people of different "races," skin color, and national origins among its citizens. Only recently has the MCN perpetrated a policy of exclusion based upon race. Historically, the MCN comprised a confederacy of separate towns, tribes, and peoples throughout what is now the southeastern United States.[1]

As European colonists and eventually white non-indigenous Americans began to inhabit this area, they sought to "civilize the Creek Indian." In the ensuing decades, the United States continuously and repeatedly attempted to impose, often by force, its customs, economy, religion, and political structure on indigenous groups such as the MCN. One American custom adopted by *some* Creek citizens was the plantation economy and the reliance on chattel African slavery as a labor force.

Along with enslaved Africans who were owned by MCN citizens, there were also MCN citizens of African descent and free Blacks openly living as citizens of the MCN. All these segments of MCN society were forcibly removed pursuant to the Indian Removal Act of 1830, when the United States expelled the MCN from their traditional homelands and sent them along the infamous Trail of Tears to live in Indian Territory, in what is now Oklahoma.

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[1] Among those peoples were the Yamassee or Jamassi who were reported to have been "immigrants from Africa prior to the European discovery of America." See, *United States Department of Interior Census Office, Extra Census Bulletin, Washington, D.C.: United States Census Printing Office (1894),* p. 27.

The Creeks were removed primarily by their traditional tribal "town," and it was the town "Micos" or chiefs who kept the tribal rolls. This allowed the MCN citizens who made it to Oklahoma to re-establish their towns. Removal was carried out by the U.S. military, and approximately 24,000 MCN citizens were forced to travel to Indian Territory by foot or riverboats. Due to poor planning, organization, and indifference by the U.S. Government, thousands of MCN citizens died on the way to Indian Territory due to exposure, starvation, and disease. Even after removal to Indian Territory, some MCN citizens continued to hold slaves until the Creek Treaty of 1866 abolished slavery in the Creek Nation.

THE CIVIL WAR AND THE TREATY OF 1866

In 1861, Union forces withdrew from Indian Territory, and Confederate officials formally occupied Indian Territory. Some Creeks, known as the "Lower/Southern Creeks," who had been more willing to adopt the plantation economy and other European customs, provided supplies, men, and support to the Confederacy, and even sent representatives to the Confederate Congress. Other Creeks, known as the "Upper/Loyal Creeks," who generally resisted cultural assimilation, provided supplies, men, and support for the Union.

A contingent of Loyal Creeks, which included a substantial "Black" Creek component, left their homes for Kansas to flee from Lower/Southern Creek soldiers and their Confederate allies. The Battle of Honey Springs Creek was a major battle that occurred in Indian Territory during the Civil War, and Upper/Loyal Creeks, including "Black" Creeks, valiantly fought against the Confederacy and their allies. In 1865, after the Civil War ended, President Andrew Johnson designated a commission to travel to Fort Smith, Arkansas, to convene a council for the purpose of negotiating new treaties with the Creeks and the other four tribes making up the so-called "Five Civilized Tribes": the Seminoles, Cherokees, Choctaws, and Chickasaws.

The members of that commission declared that a treaty between each tribe and the United States "must" contain certain stipulations, including that "[t]he institution of slavery, which has existed among several of the tribes, must be forthwith abolished, and measures taken for the unconditional emancipation of all persons held in bondage, and for their incorporation into the tribes on an equal footing with the original members, or suitably provided for." D.N. COOLEY, SOUTHERN SUPERINTENDENCE 296, 298. (Oct. 30, 1865).

In an exercise of its sovereignty, the MCN negotiated and executed the Treaty of 1866[2] with the United States. That treaty became the foundational legal document of the Creek Nation and established the modern MCN as it is known today. The treaty provides in pertinent part:

> **[I]nasmuch as there are among the Creek many persons of African descent…it is stipulated that hereafter these persons, lawfully residing in said Creek country, under their laws and usages, or who have been thus residing in said country, and may return within one year from the ratification of this treaty, and their descendants and such others of the same race as may be permitted by the laws of said**

[2] My paternal great-great-great-grandfather, Coweta Micco (a/k/a Cow Tom) was one of only five (5) Creek Citizens to negotiate and sign the Treaty of 1866.

> **Nation to settle within the limits of the jurisdiction of the Creek Nation as citizens [thereof], shall have and enjoy all the rights and privileges of native citizens, including an equal interest in the soil and national funds; and the laws of said Nation shall be equally binding upon and give equal protection to all such persons. . . .**

Treaty of 1866, Art. II.

Functionally, identical clauses outlawing slavery and granting full citizenship to those formally enslaved persons also appear in the treaties that the Seminole, Cherokee, and Choctaw Nations executed with the United States in 1866.

MCN POST-CIVIL WAR AND PRE-DAWES ROLLS ENROLLMENT

Shortly after executing the Treaty of 1866, the MCN reorganized their government constitutional structure; and, in 1867, the MCN created a new and expansive constitution ("1867 Constitution").

The 1867 MCN Constitution did not discriminate against Creeks of African descent, Free Africans, or Creek Freedmen citizens of MCN. In fact, Article I, Sec. 1, 2, and 3 of the 1867 Constitution authorized each *etvlwv* (town) to elect a member to the House of Kings and House of Warriors.[3] The towns in existence at that time included three African Creek towns – Arkansas Colored, North Fork Colored, and Canadian Colored.

Between 1867 and 1895, the MCN created numerous rolls of its citizens. None of these rolls created by the MCN contained or listed any blood quantum, or singled out Creeks of African descent, "Free African" MCN citizens, or formerly-enslaved Africans who were emancipated and accepted as Creek citizens pursuant to the Treaty of 1866. Between 1866 and 1906, Creeks of African descent were an essential part of the MCN community, as evidenced by their service in important and high positions in MCN government, and other areas of MCN life, including Creek citizens like Sugar George, Judge Henry Reed, Harry Island, and Warrior Rentie.

THE DAWES ROLLS

In 1887, Congress passed the Dawes Act of 1887 ("Dawes Act"). The stated purpose of the Dawes Act was to prepare Indian Territory for statehood and white settlement. To this end, the Dawes Act authorized the transfer of most of the land owned corporately by the so-called Five Civilized Tribes (the Creek, Cherokee, Seminole, Chickasaw, and Choctaw nations) to individual tribal citizens. Implicit in this allocation policy was an effort to eliminate the tribes' ability to self-govern. After the Dawes Act had been enacted, Congress created the Dawes Commission in 1893 and tasked it with identifying all MCN citizens who were eligible for land allotment in what would come to be known as the Dawes Roll.

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[3] Under MCN's bicameral legislature the House of Kings and House of Warrior were equivalent to the U.S. Senate and the U.S. House of Representatives.

Five years after the creation of the Dawes Commission, Congress passed the Curtis Act of June 28, 1898, 30 Stat. 495, ("Curtis Act"), directing the commission to create two lists of citizens of the Creek Nation who would be eligible for land allotment: (1) the "Creek Nation Creek Roll," which was purportedly only composed of Creek citizens with Creek blood; and (2) the "Creek Nation Freedmen Roll," which was purportedly only a roll of those citizens of the Creek Nation who were formerly enslaved Africans and devoid of any Creek blood.[4] The Dawes Commission, motivated by racism and white supremacy, used race and MCN citizens' physical appearance to segregate Creeks of African Descent, i.e. "Creek Freedmen." The "true" Creeks, in the Dawes Commission's estimation, were listed on the Creek Roll, also known as the Blood Roll; the Creek Freedmen (*i.e.* individuals of African descent, regardless of whether they or their ancestors were previously enslaved in the MCN) were listed on the Creek Freedmen Roll.

The Dawes Commission employed the hypo-descent rule, by which any individual with "one drop" of "Black blood" was to be considered Black and, therefore, belonged on the Freedmen Roll. The Dawes Commission, therefore, enrolled many Creeks of African descent on the Freedmen Roll, regardless of whether they or their ancestors were ever enslaved in the MCN or how much "Creek blood" they possessed.[5] Therefore, once the Dawes Rolls closed on March 4, 1907, Creek citizens enrolled on the Freedmen Roll and their descendants, in perpetuity, would always carry the ugly badge of slavery, regardless of whether the enrollee or their ancestors were ever enslaved.

EXPULSION OF CREEK FREEDMEN AND DIVESTURE OF CITIZENSHIP RIGHTS

On or about August 18, 1975, the MCN, through its National Council, submitted to the United States Department of the Interior ("DOI") a draft constitution ("Draft Constitution") that, among other things, contained express provisions which: (1) stripped individuals on the 1906 Creek Freedmen Rolls and their then-living lineal descendants of their MCN citizenship; and (2) prevented the unborn lineal descendants of individuals who were enrolled on the 1906 Creek Freedmen Rolls from becoming citizens of MCN. Before the MCN submitted the Draft Constitution to DOI, the MCN did not seek, obtain, or allow any input from Creek Freedmen or individuals representing Creek Freedmen's interests.

On October 29, 1977, then-MCN Principal Chief Claud Cox, a proponent of the new constitution, admitted that one of the express goals of the Draft Constitution was to strip Freedmen and Creek Freedmen Descendants of their MCN citizenship and rights, stating:

> **When you go back to the old [1867] Constitution, you are licked before you start; because it doesn't talk about Indians, it talks about CITIZENS of the CREEK NATION. When you got down to the Allotment time, there were more that was non-Indians or half-blood or less, who outnumbered the full blood, all of these totaled about 11,000, and there were only 18,000 on the entire Roll; so there was only 9,000 above One-half blood. That's the reason,**

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[4] *See,* Felix S. Cohen, *Handbook of Federal Indian Law*, 431 (1982).

[5] "[I]n cases of mixed freedmen and Indian parents, which was common among the Creeks . . . the applicant was always enrolled as a 'freedmen'." Kent Carter, *The Dawes Commission and the Allotment of the Five Civilized Tribes 1893–1914* (1999). Dawes Commission personnel were instructed to look for and/or inquire if a MCN citizen had any African ancestry, and to place that individual on the so-called Freedmen roll. *Id.*

> **they lost control; the FULLBLOOD lost control. That's what we're fighting, this blood quantum, trying to get back and let the people control because under the old Constitution, you've lost before you ever started. There were three FREEDMAN bands that would outnumber you today as citizens. So, if we want to keep the INDIAN in control, we've got to take a good look at this thing and get us a Constitution that will keep the Creek Indian in Control.**[6]

On August 17, 1979, DOI approved the new MCN constitution for MCN referendum ("1979 Constitution"). On October 6, 1979, the MCN held an election to formally adopt the 1979 Constitution and replace the 1867 Constitution. Section 503 of the Oklahoma Indian Welfare Act, 25 U.S.C. § 5203, in effect in 1979, required the participation of at least 30% of "those entitled" to vote, or the results of the election would be invalid. The total number of "entitled voters" that MCN officials identified prior to the 1979 constitutional referendum did not include Creek Freedmen or Creek Freedmen Descendants, in an apparent effort to meet OIWA election requirements. Creek Freedmen and their Descendants were denied the right to vote on the 1979 Constitution and did not cast votes.

Upon the dubious ratification of the 1979 Constitution, and with DOI's approval, the MCN illegally declared that all Freedmen were not entitled to MCN citizenship and would no longer be recognized or allowed to be citizens of MCN. The MCN also began to summarily deny Creek Freedmen and their Descendants applications for citizenship. As a result, thousands of Creek citizens—including my clients, whose ancestors' names appeared on the Creek Freedmen Roll—were stripped of their legal rights and cultural identity. Creek Freedmen Descendants have been denied their MCN citizenship rights as the MCN has implemented statutes and policies under the illegal 1979 Constitution and in violation of the Treaty of 1866.

From 1979 through the present, eligible Freedmen and Creek Freedmen Descendants who have applied for MCN citizenships and have been summarily denied. Often, Freedmen applicants are informed of their denial via a form letter from the Citizenship Board, which includes some version of the following language, taken from a May 31, 2002, letter from MCN to a Creek Freedmen applicant:

> We are returning your letter and any other documents submitted for enrollment into the Muscogee (Creek) Nation because in checking the Dawes Commission Rolls, your ancestors were enrolled on the Creek Freedmen Rolls. If you will note from the copy you submitted there is no blood quantum listed because they are not Creek by Blood. When slavery was abolished following the Civil War, Treaties were negotiated with the Five-Civilized Tribes; the Choctaw, Cherokee, Chickasaw, Creek and Seminole Nations. The treaties conferred citizenship in the tribes on the negroes who had been held in slavery by the tribes. Such citizens were referred to as 'Freedmen.'[7]

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[6] MCN National Council Minutes, October 29, 1977 at 31.

[7] *See,* letter dated May 31, 2002, from MCN to Creek Freedmen Applicant on file with undersigned.

CREEK FREEDMEN'S UNSUCCESSFUL LITIGATION HISTORY

In 2004, on behalf of two Freedmen Descendants, Fred Johnson "(Johnson") and Ron Graham ("Graham"), I litigated the issue of Freedmen's and Freedmen Descendants' citizenship within the MCN court in *Johnson and Graham v. Muscogee (Creek) Nation of Oklahoma Citizenship Board*, CV 2003-54. The MCN Citizenship Board ("Citizenship Board"), which was created after ratification of the unlawful 1979 Constitution, repeatedly denied Johnson's and Graham's citizenship applications between 1983 and 2003.

I appealed the Citizenship Board's administrative decisions against Johnson and Graham to the MCN District Court, alleging arbitrary and capricious decision-making and abuses of discretion by the Citizenship Board. Johnson and Graham contended that they and all Freedmen were eligible for citizenship in MCN, pursuant to the Treaty of 1866, the Muscogee (Creek) Nation Constitution, and the MCN Citizenship Code. A bench trial on the merits was held over seven days between August 28, 2005, and September 14, 2005. During the trial, we introduced hundreds of exhibits and took the live testimony of approximately 12 witnesses, including the foremost Creek Freedmen academic, Dr. Daniel Littlefield.

In its March 27, 2006 opinion, the MCN District Court **declined** to rule on or even discuss the substantive issues directly related to the Treaty of 1866 and the validity of the 1979 Constitution. Instead, the MCN District Court found the Citizenship Board did not follow MCN law that mandated Johnson, Graham, and other Descendants to have their citizenship applications processed. On or about April 13, 2006, the Citizenship Board refused to comply with the MCN District Court's order to process Johnson's and Graham's citizenship applications. On November 2, 2007, the MCN Supreme Court unanimously reversed the MCN District Court decision and similarly **refused** to rule on the applicability of the citizenship provisions of the Treaty of 1866.

After more than ten (10) years of trying to work with the elected officials of MCN without any results, in July 2018, I filed a lawsuit in the United States District Court for the District of D.C. against the MCN and DOI on behalf of the Muscogee Creek Indian Freedmen Band ("Band") and a handful of individual Creek Freedmen[8] for the MCN's denial of citizenship on account of their race and the DOI's breach of its fiduciary duty to protect the citizenship rights of the Creek Freedmen, including, without limitation, their rights to vote and to run for office. In June 2019, despite our arguments that exhausting tribal remedies would be futile, the court dismissed the lawsuit without prejudice, pending the exhaustion of remedies in tribal court. Accordingly, when two of our clients' applications for citizenship with MCN were denied in July and October 2019, respectively, each filed administrative appeals with the MCN, which were also denied.

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[8] The named plaintiffs included: Rhonda K. Grayson ("Grayson") is a direct lineal descendant of America Cohee-Webster Dawes Roll #4661, Sharon Lenzy-Scott ("Lenzy-Scott") is a direct lineal descendant of Jackson Perryman Dawes Roll #3635, Jeffrey D. Kennedy ("Kennedy") is a direct lineal descendant of Ben Grayson, Dawes Roll #5329, and Johnnie Mae Austin ("Austin") is a direct lineal descendant of John W. Simmons, Dawes Roll #645.

In March 2020, I filed a petition in the MCN District Court on behalf of our Creek Freedmen clients, alleging that the MCN Citizenship Board violated the U.S. Constitution; the Principal Chiefs Act of 1970; the Indian Civil Rights Act, 25 U.S.C. §§ 1301, *et seq.*; and the Treaty of 1866, by denying our clients their citizenship rights. Ever since then, the MCN and even the tribal court itself has engaged in a slew of dilatory tactics to preclude our clients from obtaining a ruling that would permit them to re-file their original complaint in federal court. Counsel for the MCN has been unreasonably unavailable, filed frivolous briefs, and peppered us with discovery requests even though the facts are undisputed and the only issue to be decided is purely one of law to be decided by the court. Moreover, two of the only three judges available to preside over cases filed in the MCN District Court both recused themselves from the case over 6 months ago, and a new judge has not been assigned to the case. Consequently, the MCN has effectively prevented us from exhausting tribal remedies, knowing that is a prerequisite to refiling our lawsuit in federal court.

EFFECT OF 2020 U.S. SUPREME COURT *MCGIRT* RULING

Citizenship rights like voting and running for office are important enough to warrant congressional intervention in this matter, but the need for a legislative remedy has grown even more in the wake of the U.S. Supreme Court's decision in *McGirt v. Oklahoma*, 140 S. Ct. 2452. In *McGirt*, the Supreme Court held that the MCN reservation, which was established by way of the Treaty of 1866 and which comprises a large part of eastern Oklahoma, had never been disestablished, and that the State of Oklahoma therefore lacked jurisdiction within the bounds of the reservation to prosecute crimes under the Major Crimes Act.

Since this ruling was handed down, the MCN has been using it to rationalize the MCN's attempts to assert more power over other affairs here in the State of Oklahoma, such as energy and gaming. In other words, while the MCN actively defends against claims that its race-based discrimination against Creek Freedmen violates the Treaty of 1866, it simultaneously rationalizes its power grabs by pointing to the Treaty of 1866. The hypocrisy is simply stunning.

Moreover, *McGirt* has effectively created another disparity between Creek Freedmen and other MCN citizens. Because Creek Freedmen are being denied citizenship with the tribe, they are unable to avail themselves of the benefits of the *McGirt* ruling. Since *McGirt* was decided, state court judges have, in practice, required defendants seeking to have their cases dismissed based on *McGirt* to prove their affiliation by showing verification of tribal citizenship or by showing they possess some degree of Indian blood. Due to the MCN's racial discrimination against Creek Freedmen (who do not necessarily possess Indian blood), Freedmen who are prosecuted by the State have been left without a means to demonstrate their affiliation with the MCN. The result is that non-Black MCN members can get their cases dismissed, while Black Creeks cannot.

This disparity, based entirely on race, is unacceptable and blatantly violates the Creek Freedmen criminal defendants' constitutional rights under the Due Process and Equal Protection clauses, among others. These Creek Freedmen's liberty interests are at stake, providing more immediacy to the need for Congress to intervene to mandate that the MCN restore citizenship rights to Creek Freedmen.

ARTICLE II OF THE TREATY OF 1866 IS BINDING ON THE MCN

The Creek Treaty of 1866 is a bilateral agreement—negotiated and signed by two sovereign entities utilizing their executive and legislative governmental powers. The overall validity of the agreement has not been contested by the MCN and was upheld by the *McGirt* decision. Consequently, the Treaty of 1866 remains the supreme law of the land, both within the Creek Nation and within the United States of America.

The U.S. Supreme Court has established that there must be "clear and plain evidence that Congress actually considered the conflict between its intended action on the one hand and Indian treaty rights on the other and chose to resolve that conflict by abrogating the treaty." *United States v. Dion*, 476 U.S. 734, 739-40 (1986). Restrictions on Indian Treaty abrogation are well-settled in U.S. Supreme Court precedent. Treaty rights are too fundamental to be casually cast aside: "Congress may abrogate Indian treaty rights, but it must clearly express its intent to do so." *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 202 (1999) (citations omitted). There has been no act of Congress expressing any intent to abrogate Article II of the Creek Treaty of 1866. As a result, the MCN cannot unilaterally extinguish the Freedmen's rights under the Creek Treaty of 1866.

The MCN exercised its sovereignty to execute and bind itself to the terms of the Creek Treaty of 1866, and the MCN cannot now, under the guise of sovereignty, claim the power to renege on its covenant to admit the Freedmen and their Descendants as citizens of the MCN. The U.S. Government has already analyzed a treaty provision functionally identical to Article II of the Creek Treaty of 1866 and found that it guaranteed Cherokee citizenship in the Cherokee Nation of Oklahoma, and, since the Cherokee Treaty of 1866 had not been abrogated, the Cherokee Nation had to grant Cherokee Freedmen citizenship within the Cherokee Nation. *See Cherokee Nation v. Nash*, 267 F.Supp.3d 86 (D.D.C. 2017).

SPECIFIC LEGISLATIVE ACTION REQUESTED:

We are respectfully asking this Committee to support Congresswoman Maxine Waters' (D-CA) language that would prevent MCN from receiving any benefits from the 2021 NAHASDA Reauthorization until Black Creek Indians' citizenship rights are fully and completely restored. Specifically, this Committee and Congress must ensure that the MCN understands:

- The Creek Treaty of 1866 guarantees the Creek Freedmen Descendants the right to full and equal citizenship in the MCN;
- The Creek Freedmen Descendants are legally indistinguishable from other citizens of the MCN pursuant to the Creek Treaty of 1866;
- As equal citizens of the MCN, the Creek Freedmen Descendants are entitled to all rights, privileges, protections, and benefits arising from citizenship in the Creek Nation equally and on the same basis as all other MCN citizens, including, without limitation, the rights to vote in MCN elections, to run for and hold MCN office, and to receive funds and benefits available to MCN citizens;

- No federal statute or superseding treaty has modified the Creek Freedmen Descendants' citizenship rights as they were granted in the Creek Treaty of 1866;
- No amendment to the MCN Constitution has modified or can modify the citizenship rights of Creek Freedmen Descendants, because those rights are derived from the Creek Treaty of 1866 and not the MCN Constitution.

It was similar bold and sustained actions of members of the Congress on behalf of Cherokee Freedmen that paved the way for thousands of Cherokee Freedmen to secure their voting rights in 2007, and eventually secure their full citizenship rights with Cherokee Nation of Oklahoma ("CNO"). Specifically, in 2007, several members took a similar position as Congresswoman Waters is advocating today against the CNO. For example, on September 6, 2007, Congressman Mel Watt (D-NC) offered a successful amendment during the floor debate of H.R. 2786. Rep. Watt's amendment successfully limited funds to the CNO until they recognized Cherokee Freedmen as citizens.

CONCLUSION

In closing, the exclusion of Creek Freedmen from citizenship with the MCN is not a tribal sovereignty issue; it is a racial justice issue. While legislation like the *For the People Act* and the *George Floyd Justice in Policing Act* has rightfully been championed by this Congress. Legislation from this Congress to protect Black Creeks' fundamental rights as MCN citizens is just as important and necessary to ensure justice and equity for *all* Americans. Bold actions taken by the Congress helped the Cherokee Freedmen secure their full and complete citizenship rights within the CNO. My clients and your constituents are confident that your tangible support of their cause will produce similar results for Creek Freedmen. Lastly, of you have any questions or comments, you may contact me personally at 918-551-8999 or dss@solomonsimmons.com.

Sincerely,

Damario Solomon-Simmons, Esq., M.Ed.
FOR THE FIRM

RE: Questions for the Record from Chairwoman Maxine Waters

1. The Committee has heard from Freedmen descendants of the Five Tribes that some of the tribes have a practice of counting descendants of Freedmen as part of their total membership population in order to secure higher funding allocations through NAHASDA. However, those same tribes reportedly deny descendants of Freedmen access to resources through NAHASDA.

Cherokee Nation does not engage in this alleged practice—if anything, IHBG data drastically undercounts our Tribal population.

As of Oct 1, 2021, Cherokee Nation had more than 400,000 enrolled citizens. For FY 2021, our population according to the IHBG formula was less than 124,000.

   a. Chief Hoskin, in your testimony, you stated that over 8,000 Freedmen descendants have been granted membership to the Cherokee Nation. How many total citizenship applications has the Cherokee Nation received relative to the number of applications that have been approved?

Since the *Nash* ruling we have approved and processed more than 9,000 citizenship requests from descendants of Cherokee Freedmen.

Approximately 96 percent of the citizenship requests from descendants of Cherokee Freedmen have been accepted—this a higher acceptance rate than citizenship requests from non-Freedmen applicants.

   b. How does the Cherokee Nation track, evaluate, and ensure Freedmen descendant members receive equal access to federal funds granted to the tribe, as is required under 1866 treaty obligations?
   c. Based on total applications for housing assistance under programs funded through NAHASDA, please share the rate at which Cherokee Freedmen have received access to housing assistance compared to all other applicants.

Cherokee Nation's housing application process is blind and based on tribal citizenship/tribal affiliation.

A Cherokee Nation citizen is a Cherokee Nation citizen. The Cherokee Nation does not consist of Freedmen citizens and non-Freedmen citizens. The CN citizenship card does not state how a citizen gained citizenship (nor should it). The CN housing application process simply asks applicants to provide a proof of tribal citizenship—it does not request distinguishing information on an applicant's lineage.

We are able to report accurate enrollment numbers of Freedmen descendants because the CN citizenship process requires an examination of ancestry—specifically, whether an ancestor signed one of the Dawes Rolls. So, at time of registration, we know if a prospective citizen is a descendent of a Freedman because they will have asserted that one of their ancestors signed the

Cherokee Freedmen roll. After the registration process, however, there is absolutely no distinction between a citizen whose ancestor signed a Freedmen roll and a citizen whose ancestor signed a By Blood roll.

d. What processes are in place for Cherokee Freedmen citizens to file discrimination and treaty rights complaints with the nation?

Equal protection and equal opportunity for Cherokee citizens under the law are essential guiding legal principles under the Constitution of the Cherokee Nation. To help ensure compliance with these principles, Chief Hoskin signed an executive order on equality, reiterating Cherokee Nation's commitment to equal protection and equal opportunity. The order directs the tribe's executive branch to determine whether barriers to equal access to services exist, to remove such barriers, and to establish plans for outreach to Cherokee citizens of Freedmen descent.

2. Diversity, equity, and inclusion are top priorities for Chairwoman Waters and the Financial Services Committee. Please share how the Cherokee Nation promotes diversity, equity, and inclusion, including that of descendants of Black Native American Freedmen.
    a. Please provide data on the number of Freedmen descendants who: (a) serve in elected positions; (b) serve in unelected positions; and (c) have been hired or currently work for the Cherokee Nation, as well as the seniority of the positions such individuals occupy.
    b. Please provide data on the number of individuals, disaggregated by gender, disability, and any other indicators available, who: (a) serve in elected positions; (b) serve in unelected positions; and (c) have been hired or currently work for the Cherokee Nation, as well as the seniority of the positions such individuals occupy.
    c. Please provide data on the total amount and percentage spent by your organization with women-owned, minority-owned, or minority women-owned firms by category of spend.

Cherokee Nation's government is a tripartite government with executive, legislative and judicial branches. Services are administered under the Executive Branch through the Principal Chief and Deputy Principal Chief and their cabinet members. Laws are enacted by a 17-member legislative body The Principal Chief, Deputy Principal Chief, and Tribal Council are elected positions.

Cherokee Nation's Attorney General, Secretary of State, Treasurer, Delegate to Congress, and Special Envoy to the US Department of the Treasury are women. Five of 17 tribal councilors are women. Twenty-five percent of Judicial Branch officials are women.

More than 70 percent of Cherokee Nation employees are women.

Earlier this year Chief Hoskin appointed Marilyn Vann to the Cherokee Nation Environmental Protection Commission. The Tribal Council approved her nomination Sept. 13. Vann is the first citizen of Freedmen descent to be confirmed to a government commission.

3. Permanent supportive housing has proven both effective and cost-efficient in helping to stabilize households experiencing homelessness.

a. Could you each describe your efforts to address homelessness generally, and in particular develop and operate permanent supportive housing?
b. Could you describe any innovative efforts to provide culturally-specific interventions, especially given so many Native Americans and Alaskan Natives' negative experiences with institutional settings dating back to forced attendance of boarding schools?

Chief Hoskin recently joined Secretary Fudge to announce the launch of House America: An All-Hands-On-Deck Effort to Address the Nation's Homelessness Crisis. Cherokee Nation is the sole Tribal nation in the United States to commit to House America's outline.

Additionally, Cherokee Nation is spending $22.5 million to repair or build replacement homes for Cherokee citizens. The Cherokee Nation Housing, Jobs and Sustainable Communities Act enabled 214 projects for Cherokee elders or Cherokees with disabilities. Ninety-five percent of these projects are finished, in progress, out for bid, or undergoing environmental and other site inspections.

Questions for the Record from Chairwoman Maxine Waters
Subcommittee Hearing, entitled "NAHASDA Reauthorization: Addressing Historic Disinvestment and the Ongoing Plight of the Freedmen in Native American Communities"
July 27, 2021, 2 p.m. ET

Mr. Chris Kolerok

1. Diversity, equity, and inclusion are top priorities for Chairwoman Waters and the Financial Services Committee. Please share how your organization promotes diversity, equity, and inclusion, including that of descendants of Black Native American Freedmen.
    a. Please provide data on the number of Freedmen descendants who: (a) serve in elected positions; (b) serve in unelected positions; and (c) have been hired or currently work for your organization, as well as the seniority of the positions such individuals occupy.
    b. Please provide data on the number of individuals, disaggregated by gender, disability, and any other indicators available, who: (a) serve in elected positions; (b) serve in unelected positions; and (c) have been hired or currently work for your organization, as well as the seniority of the positions such individuals occupy.
    c. Please provide data on the total amount and percentage spent by your organization with women-owned, minority-owned, or minority women-owned firms by category of spend.

2. As in the rest of the country, unfortunately, homelessness is tragically widespread on tribal lands. And, again like a significant percentage of persons experiencing homelessness elsewhere, many Native Americans and Alaskan Natives who experience homelessness also confront mental health, substance addiction, and other chronic health challenges. Permanent supportive housing has proven effective, and cost-efficient, at helping stabilize these vulnerable populations in housing and improve their health.
    a. Could you each describe your efforts to address homelessness generally, and in particular develop and operate permanent supportive housing?
    b. Could you describe any innovative efforts to provide culturally-specific interventions, especially given so many Native Americans and Alaskan Natives' negative experiences with institutional settings dating back to forced attendance of boarding schools?

Chairwoman Waters, thank you for the opportunity to provide additional information to the subcommittee following the hearing on July 27th.

Response to Question 1:
Diversity, equity, and inclusion are important goals for an organization serving traditionally marginalized populations. Our organization promotes diversity, equity, and inclusion by intentionally naming our buildings after indigenous place names, infusing the architecture with indigenous design, and by working with other social enterprise affiliates of CIRI to include participants in workforce development initiatives in our recruitment.

Cook Inlet Housing Authority Does not employ or have appointed Freedmen in our organization. The geographic distance and historical lack of migration links between Oklahoma and Alaska is likely the reason.

Our workforce is a healthy balance of women and members of minority ethnic groups. Of our approximately 200 employees, 119 are women, 104 are members of an ethnic minority group, and 68 are women who are members of an ethnic minority group. The leadership of our organization is diverse. Of our top five executive leadership members, 3 are women who are members of a minority ethnic group. In our second circle of management, the 14 members include 8 women, 5 ethnic minority members, and 4 women who are members of an ethnic minority group.

Our Board is made up of 5 commissioners and 2 advisory members. All 7 Board members are members of ethnic minority groups. Of those 4 are women, who are again, members of an ethnic minority group.

Response to Question 2:
Cook Inlet Housing Authority works with community members who address homelessness through limited financial support, project management of construction projects to address homelessness, and board membership by employees on supportive service organizations. CIHA is providing development consulting and funding for services related to Alaska Native/American Indian persons to Providence Alaska on a proposed Permanent Supportive Housing development in midtown Anchorage. This three-phase project will start with 50 units and has the potential to expand to 150 units with appropriate capital and programmatic funding. CIHA is also providing development and project management for 28 micro-units for homeless youth served by Covenant House Alaska.

Our work is not as a direct provider. We do however see value in our partners' efforts that emphasize choice in treatment, living, and culture affirming activities. We know that when Alaska Natives are treated with the respect by choosing their living situation and have access to cultural activities they are happier and healthier physically and mentally. One of our partners includes an annual subsistence food drive for homeless youth and invites in elders to prepare the foods. That allows some connection and passage of culture in a small way for youth who would otherwise not have that opportunity.

On behalf of Cook Inlet Housing Authority, thank you for these questions and the opportunity to share with you. Please let me know how to be of service in the future.

Chris Kolerok, Director of Public Policy.

Congressman Bill Posey
Statement and Questions
The Subcommittee on Housing, Community Development and Insurance will hold a hearing entitled "NAHASDA Reauthorization: Addressing Historic Disinvestment and the Ongoing Plight of the Freedmen in Native American Communities" on Tuesday, July 27, 2021, at 2 p.m. ET in room 2128 of the Rayburn House Office Building. There will be one panel with the following witnesses:

Chuck Hoskin, Jr., Principal Chief, Cherokee Nation
Chris Kolerok, Director of Public Policy & Government Affairs, Cook Inlet Housing Authority
Marilyn Vann, President, Descendants of Freedmen of the Five Tribes Association
Anthony Walters, Executive Director, National American Indian Housing Council
Republican Witness: Jackson S. Brossy, Executive Director, Native CDFI Network

- Thank you, Chairman. I appreciate you and the Ranking Member giving us the opportunity to consider the housing needs of Native Americans. And, I appreciate the opportunity to hear from tribal leaders on this issue.

Questions for the panel:

Question 1: One of the big advances in the economic and political well-being of tribes was President Nixon's recognition of the importance of tribal sovereignty and how such sovereignty would strengthen efforts to provide much-needed programs and assistance. Today, we recognize that the Indian Self-Determination and Education Assistance Act of 1975 enabled landmark advances. Can you please tell us how the Self-Determination Act energized tribal housing, what lessons we learned, and how we can build on those successes?

Question 2: Please tell us how we can structure our housing assistance to tribes in a way that builds greater tribal capacity in all these areas.

Question 3: In the spirit of the Self-Determination Act, please tell us how our Federal housing assistance to tribes has fostered the development of institutional capacity in housing.

Congressman Posey, thank you for the opportunity to follow up with you on the important topic of NAHASDA reauthorization.

Answer to Question 1:
Self-determination has allowed Tribes to build housing that meets their needs because they are responsive to the situation on the ground at the Tribe, not in Washington, DC. In Alaska, for example, homes were no longer mass produced and shipped from out of state contractors to meet the stringent requirements of HUD. Instead energy efficient homes for the Arctic were constructed that saved the families money, lowered carbon emissions, and improved health. All the while keeping pace with previous construction as demonstrated in HUD 2017 Housing Needs of American Indians and Alaska Natives in Tribal Areas report. However, due to chronic underfunding, the level of funding for NAHASDA was stagnant for 20 years compared to the HUD's overall budget which doubled, that pace could not continue. After the injection of funding from ARRA, tribal housing providers faced stagnant budgets with two competing expenses, operations and development. Without increases in funding, every new housing unit increases operating costs, which means the next year there is less funding for new development.

Answer to Question 2:
The beauty of the NAHASDA formula is two-fold: it took away competition between Tribes who could then work together, and it efficiently combined 11 factors of housing need into a single funding stream so that each tribal housing provider could decide its own highest priority.

Dealing with the latter first – each tribal housing provider deciding its own highest priority means that different conditions in different parts of the country can be addressed rather than Washington, DC filtering its own view on the situation. For example, if a tribe in one region sees an explosion of drug-related activity they are free to use their NAHASDA funding to address that need. But another tribe in a different area that does not have the same issue can use their NAHASDA funding to

address a different need. These are not mutually exclusive and they are the embodiment of Self-Determination, the "S" and "D" in the NAHASDA. Further, the formula was negotiated by all tribes and HUD in a consensus proceeding, meaning the final result was not perfect, but was the closest to universal that any program that affects 527 sovereign entities will ever get.

The former, reduced competition amongst tribes, is key to unlocking cooperation and information sharing. Because there is no competition for the NAHASDA formula, Tribes can share information and best practices without fear that their "secret sauce" is being given away to a competitor. Indeed, competition would only benefit the Tribes with the most resources and highest capacity rather than lifting all tribes. We have seen incredible growth in capacity in Alaska due to our cooperation.

This is why when we have a choice between directing new funding to the NAHASDA formula, or to the IHBG Competitive, we advocate that most of the new funding is directed to the formula. It is faster, takes fewer resources in HUD to administer and in Tribes to apply for, and takes away the competitive mindset that separates Tribes. The formula respects self-determination rather than Washington determination for Tribes. To be clear, the IHBG Competitive grants are a welcome increase in housing resources, but they should be a second priority to the NAHASDA formula for new funding.

Answer to Question 3:
Institutional Capacity has been built through predictable funding that allow tribes to get away from a year-to-year plan and think about three, five, or ten year plans. In remote rural Alaska, due to the ice being in place until June and returning in October in some village, logistics has to be arranged before January 1. Which means plans have to be drafted and approved by June for engineering and ordering. This is a full year prior to the arrival of the any material. Year to year uncertainty delays these plans, could cancel them, or requires a "rush job" to meet deadlines which is more expensive. Longer-term planning allows better development in rural Alaska, where we get building material by barge and not by truck.

This longer term thinking of development extends to the office space. With a more predictable funding stream, a housing department is able to plan for their workforce needs rather than staffing and up and down based on winning or losing a competition.

On behalf of Cook Inlet Housing Authority, thank you for these questions and the opportunity to share with you. Please let me know how to be of service in the future.

Chris Kolerok, Director of Public Policy.

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DF5CTA

QUESTIONS FOR THE RECORD FROM CHAIRMAN WATERS SUBCOMMITTEE HEARING NAHASDA REAUTHORIZATION: ADDRESSING HISTORIC DISINVESTMENT AND THE ONGOING PLIGHT OF THE FREEDMEN IN NATIVE AMERICAN COMMUNITIES 7 27 2021

Question for Marilyn Vann from Chairman Waters:: The Committee has heard from Freedmen Descendants of the Five Tribes that some of the tribes have a practice of counting freedmen descendants as part of their tribal membership population in order to receive higher funding allocations through NAHASDA. However descendants of Freedmen are unable to access such funds and federal resources, either because of unequal treatment or their citizenship is denied. Ms Vann, in your testimony you share stories of Freedmen descendants who were experiencing substandard housing conditions. Please share which tribal nations allegedly denied Freedmen members of housing resources and which Federal programs or services that they were denied to the extent that you are aware of.

Marilyn Vann Response

Honorable Chairwoman Waters. Thank you for allowing me to provide witness testimony and to answer additional questions regarding the freedmen and Federal Funded programs.

1. **Seminole Nation: of Oklahoma – Housing Assistance programs**

The Seminole nation has included their freedmen tribal members in their numbers provided to Federal agencies for funding purposes including HUD. This information was provided by Seminole Nation Tribal Councilwoman Leetta Osborne Sampson, a registered freedmen who has served on the council for over 8 years and receives council reports from the Housing Authority as well as statements made to the council by the current and former Principal Chiefs. The Seminole Nation tribal constitution consists of 28 national councilmen – 2 representatives from each of the 14 bands which includes 2 tribal representatives from each of the 2 freedmen bands. Persons registered in the tribe whose ancestors were listed on the Seminole by blood (ie with a degree of Indian blood) sections of the Dawes rolls between 1898 and 1906 are identified by the tribal government as “Seminole Nation tribal members”.

The Seminole Nation government policy is to deny registered freedmen (whom they now identify as “Seminole Nation tribal citizens” and not “Seminole Nation tribal members”). The Seminole freedmen tribal registration cards have ‘freedmen citizen” stamped on the front and “voting privileges only” stamped on the back. This differentiation in registration cards did not exist prior to the judge’s opinion in the *Seminole Nation V Norton* case in which the Federal judge reaffirmed the freedmen right to membership/citizenship in the Seminole Tribe and after the BIA informed the Seminole Nation that the freedmen registered in the tribe were entitled to tribal services. (See Exhibit A). Almost all tribal nations as well as federal law and policies use the terms “tribal member” and “tribal citizen“ interchangeably.

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The Seminole freedmen citizens have been locked out of Housing Programs operated by the Seminole Nation Housing Authority, housing programs operated by other tribal nations who service members of other tribes living in their reservations, programs operated by non governmental 3rd parties, and emergency housing programs funded by the CARES Act and the American Rescue Plan Act. The Seminole nation continues to ignore instruction from HUD since at least 2015 to allow the freedmen citizens access to the Housing programs. Additionally, the Seminole Nation slows down registration of freedmen descendants by demanding land records of their ancestor who was registered on the Dawes rolls from Seminole freedmen - records which are not required by persons registering in the tribe as Seminoles by blood tribal members. Although in late 2015 the tribe changed the housing application to allow freedmen to fill out applications for housing assistance – and then placed them in the same priority as members of other tribes living in the reservation resulting in their being no funds left for the freedmen housing needs, the tribe has now changed the application back to require CDIB cards to complete the Housing authority application. https://hasnok.org/application/files/8915/9888/4548/New_Housing2020.pdf

The tribe from time to time places moratoriums on freedmen registering in the tribe. The freedmen are currently about 14% of the tribal registrations according to information received from tribal councilwoman Leetta Osborne Sampson, but were about 32% of the tribe at the time the Dawes rolls were completed in 1906 and approved by Congress in 1907.

The Seminole Nation Housing authority operates Housing programs such as rental assistance , Lease Purchase, Down Payment programs, as well as home rehabilitation assistance. The Housing authority application which is listed on the Housing Authority website requires a Certificate of Indian blood (CDIB) card for the housing department application to be processed. This requirement bars Seminole freedmen from applying for the programs.

Seminole Freedmen are also unable to participate in the Section 184 home loans program even when living in a qualifying state/county inside or outside the Seminole Nation because the tribal nation or lender processing the application will after contacting Seminole Nation to verify the tribal status of the applicant be told the applicant is “not a member of the tribe” or the applicant “has the wrong tribal card”, or “their card does not qualify them for tribal services”. The Seminole Nation national council has discussed freedmen participation in Housing programs even this year but has taken no action to change tribal law or procedures to allow freedmen participation although they have received phone calls, letters, and even visits from HUD officials since 2015 explaining the freedmen are entitled to Housing services. (HUD involvement began after Marilyn Vann and Seminole Nation Tribal Councilwoman Leetta Osborne Sampson requested an investigation from HUD and the Inspector General’s office. We received no response from the Inspector general although HUD investigated in 2015 and we received a response. See Exhibit B

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The Seminole Nation has set up an emergency rental assistance program funded by the CARES Act and or the American Rescue Plan Act. Seminole freedmen registered in the tribe have received written notification that they will not receive tribal assistance from the programs funded by the CARES act and or the American rescue plan Act (see Exhibit C). The Seminole nation National Council voted in a public meeting – available on youtube- on September 18 2021 to continue to exclude Seminole freedmen from sharing in the COVID-19 emergency assistance programs and payments after voting down Tribal Resolution TR-2021-36

2. Muscogee Creek Nation, Choctaw Nation, Chickasaw nation – Housing Programs

The freedmen descendants of these tribes are unable to access tribal housing programs because these nations have adopted tribal constitutions beginning in 1979 which bar freedmen descendants from registering for tribal membership/citizenship. These nations operate rental assistance, mortgage assistance, and home rehabilitation programs for tribal members living within the reservation. The Muscogee Creek, Choctaw, and Chickasaw nations also have COVID 19 emergency rental Assistance programs funded by CARES ACT and or American Rescue Plan Act which also service the tribes own members living outside the reservations NAHASDA funded programs assist tribal members who are unemployed, and low income: Additionally the Chickasaw nation has a COVID-19 rental assistance program which not only assists Chickasaw nation tribal members (both inside and outside the reservation) but also grants assistance to landlords who are Chickasaw nation members of the tribe.

3. **Cherokee Nation – Housing Assistance Programs**

The Cherokee nation has housing assistance programs funded thru NAHASDA and emergency COVID19 emergency housing assistance similar to the other 4 tribes. Cherokee freedmen tribal members participate in housing programs operated by Cherokee nation and have received Section 184 loans processed by third parties.

4. **Non Housing Federal Programs – Creek, Chickasaw, Choctaw & Seminole nations**

These tribes operate tribal courts and provide educational and burial assistance, job training, and utility assistance. These tribes operate casinos, offer license tags, and except for the Seminole Nation, operate clinics and hospitals. (Indian Health Services operates a clinic in within the Seminole Nation reservation) which has barred Seminole freedmen from applying for medical services as tribal citizens at the request of the Seminole Nation. Note – My understanding is that a few tribes have ignored the Seminole nation request and provided some medical services to Seminole freedmen.

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I am attaching a letter which the Cherokee nation sent out in 2014 to Seminole Freedmen who were seeking services at Cherokee Nation clinics on the same basis as members/citizens of a different tribe which confirms the Seminole nation policy is to block Seminole freedmen from receiving services operated by other tribes. See Exhibit D.

Freedmen descendants died because they were unable to receive COVID – 19 vaccines at Indian Health Service and tribal operated medical facilities which was available to other persons registered in tribes. (Tribal and Indian Health service Units received vaccine supplies sooner than state governments supplies. Freedmen deaths may well have been avoided if the freedmen had been able to access the vaccine thru the tribal Indian Health service units prior to the point in time in which those units allowed the general public to obtain vaccine at the units). Several newspaper articles ran stories on the denial of vaccine to registered Seminole freedmen during the pandemic . Oklahoma's Seminole Nation Denied Black Citizens Vaccines (buzzfeednews.com) Seminole Nation Freedmen member recorded being denied COVID vaccine by Oklahoma Indian Health Service clinic | KFOR.com Oklahoma City Black Freedmen struggle for recognition as tribal citizens - ABC News (go.com) Of course unregistered freedmen of other tribes also were denied the vaccine when it was available to tribal members earlier thru Indian health service or tribal supplies than the state supplies of vaccine were for state residents. Freedmen descendants are denied access to emergency COVID-19 relief payments as well as emergency COVID-19 services including food supplies distributed by the tribal governments. Freedmen of these tribes are also unable able to attend tribal/Bureau of Indian Affairs (BIA) operated schools such as Haskell Indian Nations University either thru lack of tribal registration or in the case of the Seminole Freedmen, the tribal government telling the tribal/Federal University staff not to register the freedmen applicant.

5. **Cherokee Nation – Non housing programs**:

The Cherokee nation operates similar non housing programs as the other tribes. Cherokee freedmen tribal members participate in programs operated by Cherokee nation including emergency COVID-19 assistance. At the request of the Cherokee nation in late 2017, the Indian Health Service sent a letter to all tribal nations, tribal clinics, and Indian health services clinics and hospitals informing them that Cherokee freedmen tribal members are to receive medical services on the basis as other members of Cherokee tribe. Subsequent to distribution of this letter, The Cherokee nation leadership has from time to time had to reach out to other tribal nations (including the Choctaw and Kickapoo nations) to request they provide medical services to Cherokee freedmen tribal members on the same basis as members of other tribes. Some Cherokee freedmen tribal members living within the Chickasaw nation reservation received letters from the Chickasaw nation in 2017 that they would not be able to access medical services in the future, but the letters were rescinded after Cherokee freedmen tribal

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members and their supporters called for boycotts of Chickasaw nation businesses including casinos. The Cherokee nation leadership has also had in recent years to reach out to Department of Interior operated educational institutions including Haskell Nations University to assist Cherokee freedmen tribal members to apply as students Haskell's staff barred freedmen from registration in spite of the fact that the application allows members of Federal tribes to apply as students regardless of blood quantum or whether they have a CDIB card.

Conclusion:

There are many Federally funded programs in which freedmen descendants cannot access due to actions of tribal governments who have signed 1866 treaties. Many freedmen descendants who are low income have great needs. Some include the following Seminole freedmen living in the city of Seminole, Oklahoma – within the Seminole Nation reservation:

Mr AC who is disabled – His home walls are gutted beneath the sheetrock. Mr SS an Elder in his 80s – needs a new roof and cannot get his wheelchair through the front door. Mr LM a blind elder in his 70s – His front door will not close, and his stairs need repair.

Without the assistance of Congress, these disabled elders will continue to live in unsafe dwellings and endure other human rights violations due to racial prejudice, and decisions made by the governments of the former slaveholding tribes to ignore the treaties and promises made to the freedmen and the US government.

Exhibits

Exhibit A – DOI Letter to Seminole Nation

Exhibit B - Letter from HUD – Re: Seminole Nation Housing Authority

Exhibit C – Letter from Seminole Nation Denying COVID-19 relief services to Freedmen

Exhibit D –Medical services letter – To Seminole freedmen

SEP 19 2003

Tribal Operations

Memorandum

To: Superintendent, Wewoka Agency, Eastern Oklahoma Region

From: Regional Director, Eastern Oklahoma Region

Subject: Determination regarding Seminole Freedmen

In response to your memorandum of August 28, 2003, regarding the above referenced matter, you requested assistance in regards to your anticipation of Freedmen members of the Seminole Nation of Oklahoma applying for Bureau assistance programs, the Agency is "seeking direction on what your response is to be, now that they are being enrolled as Freedmen members of the Tribe."

As you are aware, 25 CFR Part 20, Financial Assistance and Social Service programs, was amended effective October 20, 2000. The Agency's memorandum correctly points out that these amendments changed the definition of Indian for purposes of determining eligibility for Financial Assistance and Social Service Programs ("Any person who is a member of an Indian Tribe..."). Under the previous regulations, a minimum of 1/4 degree of Indian or Native blood was required for eligibility.

Therefore, presuming the availability of funds and an applicant's fulfillment of any other eligibility requirements, the Bureau's Financial Assistance and Social Service Programs must be extended to any individual who can establish membership in a Tribe pursuant to 25 CFR Part 20.

If further clarification is needed, please contact Lafonda Mathews, Regional Social Worker, at (918) 781-4613.

(Sgd) Jeanette Hanna

cc: Office of the Field Solicitor
Attn: Charles R. Babst, Jr.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-1000

ASSISTANT SECRETARY FOR CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

APR 2 5 2016

Ms. Marilyn Vann
President
Descendants of Freedmen of the
Five Civilized Tribes Association
PO Box 42221
Oklahoma City, OK 73123-2221

Dear President Vann:

This is in further response to your letter about services that are funded by programs authorized by the Native American Housing Assistance and Self-Determination Act (NAHASDA), and provided to Freedmen tribal members and citizens of the Seminole Nation of Oklahoma. The following information is from the Department of Housing and Urban Development's (HUD) Office of Public and Indian Housing (PIH).

In your letter, you informed the Department that the Housing Authority of the Seminole Nation of Oklahoma (HASNOK) refused to provide housing assistance funded under NAHASDA to Christine Roberts. You also indicated that Ms. Roberts was denied assistance because of her status as a Freedmen tribal member.

PIH's staff contacted HASNOK to inquire further into this matter and was informed that at the time Ms. Roberts applied for housing assistance, its admissions policies required applicants to provide a copy of their Certified Degree of Indian Blood (CDIB) card. A Tribal Enrollment card was also required.

HASNOK also informed the Department that, when Ms. Roberts submitted her application in August 2015, its Board of Commissioners was in the process of changing its admissions policies to ensure that Freedmen tribal members are not improperly denied NAHASDA-assisted services. The policy revision process began in July 2015. The new policies were adopted and put into effect December 11, 2015. The new admissions policy no longer requires applicants to provide a CDIB card, and is designed to ensure that Freedmen tribal members are not improperly denied housing assistance.

The policy revision was underway when Ms. Roberts submitted her application. Although her application was delayed by this process, it was not denied. Ultimately, Ms. Roberts was deemed eligible for all of HASNOK's programs, except for homeownership because she did not meet the income requirements.

I hope this information is helpful in responding to your constituent. If I can be of further assistance, please let me know.

Sincerely,

Erika L. Moritsugu
Assistant Secretary for Congressional
and Intergovernmental Relations

CHEROKEE NATION
Will Rogers Health Clinic
1020 Lenape Drive,
Nowata, OK 74048
918-273-7500

Office of the Chief

Bill John Baker
Principal Chief
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S. Joe Crittenden
Deputy Principal Chief
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11/24/14

To Whom It May Concern,

The process of setting up charting for health care services with Cherokee Nation starts with having the correct documents. CDIB from a federally recognized tribe, this makes him or her Indian Health Service eligible and therefore eligible for care at our health centers. If the person presenting only has a tribal membership card that has restrictions for healthcare (Voting Benefits Only) then they will not be eligible for healthcare. However, if that person can get something from their Tribe stating they are eligible for Indian Health Service then we would provide healthcare for that person. Our eligibility is based on being eligible for Indian Health Service. I did speak to Linda with Seminole Registration and she said that the cards that were presented at Will Rogers Health Center were issued for Voting Benefits Only. We truly regret at this time we are unable to offer health care with the current documentation presented. Please call if you have any questions.

Sincerely,

Vicky Knupp

Vicky J. Knupp
Manager, Information & Referral
Will Rogers Health Center
1020 Lenape Drive
Nowata, Ok. 74048
(918)273-7556
Cell: (918)273-8244

Seminole Nation of Oklahoma
P.O. Box 1498
Wewoka, OK 74884
405-257-7200

September 1, 2020

Dear Applicant,

On behalf of the Seminole Nation, thank you for submitting an application to the COVID-19 Emergency Assistance Program. After reviewing the answers provided on the application, the review committee has determined that you are ineligible to receive funding under the Program because you do not hold a valid Tribal Membership card for the Seminole Nation of Oklahoma.

There will be no further consideration given to your application at this time. If you believe this decision was made in error, please provide a copy of your current Tribal Membership card. If you have any questions, please contact the Seminole Nation COVID-19 Emergency Assistance Program information line at 405-257-7200.

Mvto,

COVID-19 Emergency Assistance Committee

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Congressman Bill Posey
Statement and Questions
The Subcommittee on Housing, Community Development and Insurance will hold a hearing entitled "NAHASDA Reauthorization: Addressing Historic Disinvestment and the Ongoing Plight of the Freedmen in Native American Communities" on Tuesday, July 27, 2021, at 2 p.m. ET room 2128 Rayburn House Building.

Questions for the panel:

Question 1: One of the big advances in the economic and political well-being of tribes was President Nixon's recognition of the importance of tribal sovereignty and how such sovereignty would strengthen efforts to provide much-needed programs and assistance. Today, we recognize that the Indian Self-Determination and Education Assistance Act of 1975 enabled landmark advances. Can you please tell us how the Self- Determination Act energized tribal housing, what lessons we learned, and how we can build on those successes?

Vann response:
Thank you Congressman Posey for allowing me to address these questions. .

A. I believe that the Self determination Act energized tribal housing by setting up a framework for the tribes to better design programs to fit the needs of their individual tribal reservation/service area rather than a "one size fits all" HUD approach which was not tailored for tribal needs. The majority of tribal service areas/reservations are more rural than HUD programs which provide service for many low income populations which often used large scale public housing projects for low income persons in large cities which were not a good fit for tribal populations. Even so – program needs vary by tribe. The isolation and difficulty in acquiring materials faced by Alaskan tribes is not faced by for example persons living on smaller reservations such as the Seminole Nation of Oklahoma. The Indian Self determination Act created a baseline for NAHASDA to be established in 1996 by allowing the tribes to exercise tribal sovereignty with the housing programs and also create tribal jobs and work for third party tribal contractors. I must stress that tribal self determination does not mean that the 5 tribes (Cherokee, Creek, Seminole, Choctaw and Chickasaw Nations) can systematically exclude Freedmen descendants through the denial of 1866 treaty rights and benefits, especially as it relates to the receipt of Federal Funds.
B. Lessons Learned:
   Vann Response: Some tribes such as the Cherokee nation have designed programs and are providing much needed rental assistance, home rehabilitation, and other programs and are working with other agencies including the Department of Veterans Affairs to provide needed housing. Based on history, some tribes need additional oversight, HUD training, and HUD investigations and or changes to federal law to improve the possibility that they will follow the law regarding access to housing programs to those who have wrongly been denied access to housing services currently or in the past. Some Seminole

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Nation tribal council persons (non freedmen) in a recent council meeting pointed out that HUD approved their housing authority plans/programs which excludes registered freedmen. HUD must be encouraged to use their lawful authority and not approve housing programs which exclude access to programs by persons entitled by Federal law including treaties and or court decisions.

C. How can we build on these successes?

Vann response: I would recommend that the Committee set up field hearing within the State of Oklahoma within tribal reservations and take testimonies from persons blocked from housing programs as a result of current and historic racism (ie violations of 13th amendment which prohibits "badges of slavery"). In this way, the Committee can see for themselves the needs of the people. I also would recommend that the Committee write to HUD and inquire about the HUD approved Seminole Nation housing plan that denied Freedmen benefits. I would urge the Committee to write to HUD and ask what actions ONAP has and will take to safeguard the Treaty rights of the freedmen. The freedmen descendants have been denied many services including educational services and I urge the Committee to work with the Committee on Education and Workforce as well as the Natural Resources Committee to examine and address denial of benefits to freedmen beyond Federal housing dollars. A whole government approach as President Biden has stated is needed to address systemic racism and discrimination.

Question 2: Please tell us how we can structure our housing assistance to tribes in a way that builds greater tribal capacity in all these areas.

Vann Response: Many tribal members are interested in applying for Section 184 loans but they live in states in which only certain counties qualify for the program, some tribal governments have been working to increase the number of approved counties and or states. In May 2021, ONAP sent out a letter to tribal Housing authorities that they were on the verge of ending loans for building homes on fee land unless additional program funds were made available. I believe that with more program funding, the possibility of adding more qualifying states/counties would result in additional homes for tribal members.

Question 3: In the spirit of the Self-Determination Act, please tell us how our Federal housing assistance to tribes has fostered the development of institutional capacity in housing.

Vann Response: The tribal assistance programs have increased institutional housing capacity. Tribal members with poor English skills are more likely to be able to interact with tribal language speakers either as employees or contractors to better get their needs met. Housing Department employees often attend community meetings where tribal members explain their needs for home repairs to employees (and often the tribal council representative) and are able to begin the process of setting up repairs or improvements without an elderly, needy tribal member having to go outside his community to get the repair process started. The result is an increase in housing capacity.

DON YOUNG
CONGRESSMAN FOR ALL ALASKA
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Congress of the United States
House of Representatives
Washington, D.C. 20515

COMMITTEE ON
NATURAL RESOURCES
CHAIRMAN EMERITUS

COMMITTEE ON
TRANSPORTATION & INFRASTRUCTURE

REPUBLICAN
POLICY COMMITTEE

CANADA-U.S.
INTER-PARLIAMENTARY GROUP

July 27, 2021

The Honorable Emanuel Cleaver
Chairman
Subcommittee on Housing, Community
Development and Insurance
House of Representatives
Washington, D.C. 20515

The Honorable French Hill
Ranking Member
Subcommittee on Housing, Community
Development and Insurance
House of Representatives
Washington, D.C. 20515

Dear Chairman Cleaver and Ranking Member Hill

Thank you for the opportunity to submit this letter introducing my constituent testifying before the subcommittee today, Mr. Chris Kolerok. His experience and perspective will help Congress better understand how the Native American Housing Assistance and Self Determination Act (NAHASDA) works on the ground in Alaska.

Chris Kolerok has a long history of serving Alaska Natives in several different positions and he understands the opportunities and challenges of housing individuals and families in Alaska, both in urban and rural areas. Currently, he is the Director of Public Policy with Cook Inlet Housing Authority (CIHA) where he leads policy research and relationships with Federal, State, and local policy makers. Before joining CIHA, Chris was President of the Bering Straits Regional Housing Authority, which is the Tribally Designated Housing Entity in the Bering Straits region for 17 tribes residing just below the Arctic Circle.

Chris also chairs the Legislative Committee of the Association of Alaska Housing Authorities, is a Board Member for the National American Indian Housing Council, and serves on both the Alaska statewide Continuum of Care (as Chair) and Anchorage's local Continuum of Care (as a board member).

Thank you again for ensuring the housing needs of Alaska Natives are represented at this subcommittee hearing. I look forward to working with the Committee towards NAHASDA's reauthorization for the benefit of all Alaska Natives, American Indians, and Native Hawaiians.

Sincerely,

Don Young

DON YOUNG
Congressman for All Alaska

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HTTP://DONYOUNG.HOUSE.GOV

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