

**TESTIMONY OF CHICKASAW NATION SENIOR COUNSEL STEPHEN GREETHAM
CONCERNING OVERSIGHT HEARING ON SELECT PROVISIONS OF THE
1866 RECONSTRUCTION TREATIES
BETWEEN THE UNITED STATES AND OKLAHOMA TRIBES,
BEFORE THE UNITED STATES SENATE COMMITTEE ON INDIAN AFFAIRS**

(Submitted July 25, 2022)

Chairman Schatz, Vice Chairwoman Murkowski, and honorable members of the Committee:

My name is Stephen Greetham. I serve as Senior Counsel to the Chickasaw Nation, a position within Chickasaw government in which I work with the Nation's leadership on a broad variety of matters. Thank you for the opportunity to speak with you today.

Human chattel slavery is a stain on history—this continent's history, the United States' history, and Chickasaw history. Likewise, Jim Crow is a stain on the United States' and Oklahoma's history. There can be no ambiguity on those points, nor is there any defense to them.

The Committee has convened this hearing to inquire as to whether any of the Five Tribes has an outstanding treaty obligation to vest Tribal citizenship in the descendants of those Freedpersons formerly held in bondage under its laws. With respect to the Chickasaw Nation, article three of its 1866 Treaty with the United States controls today's inquiry, and the meaning and effect of that article was decided by the federal courts more than a century ago. As adjudicated by the United States Supreme Court, the Chickasaw Nation is not in violation of any treaty obligation, and its citizenship parameters remain properly and lawfully controlled by the Nation's constitution and code.

All nations and peoples evolve, adapt, and seek to reconcile their often complicated histories over time. And all peoples, as an aspect of their inherent sovereignty, are entitled to engage in these processes *as a people*. The United States and the Chickasaw Nation signed the

1866 Treaty during a difficult period in our shared history, a period in which the United States first began its own process of attempting to reconcile its reliance on human chattel slavery and the race laws designed to support it. Now, more than 150 years on, this process continues.

Since first contact with European colonialists, Chickasaws have been committed to protecting their national sense of self and have resisted subordination to any other sovereign. Even still, Chickasaw engaged in and adopted certain practices and economies of the North American colonial system, including human chattel slavery. This history, accordingly, is a part of Chickasaw history as it is a part of United States history.

As another part of our shared history, slavery led to war among the states within a single generation of the United States' breaking faith and removing the Chickasaw Nation from its ancestral homeland to Indian Territory—what is now Oklahoma. On the outbreak of war, the United States violated its Removal Era treaty obligations and militarily abandoned Indian Territory, and the Nation acted in accord with what its national survival required. Just as American citizens, though, Chickasaws (who were not United States citizens at the time) were divided on both the war and its causes. This internal division led different factions of its people to fight on different sides of the conflict, and when war was over, the United States and Chickasaw Nation worked to restore peace and their prior relations, forming and entering the [Treaty of 1866](#), 14 Stats. 769 (Jun. 28, 1866), expressly for those purposes.

Article three of the Treaty addressed Freedpersons and Chickasaw Nation citizenship. The article is long, but it provided for a Chickasaw Nation land cession to the United States and excused the United States from paying compensation therefor unless the Nation extended Tribal citizenship to certain Freedpersons. By the Treaty's plain terms, the choice of extending Chickasaw

citizenship remained with the Chickasaw people: Such fundamental choice was neither made in nor supplanted by the Treaty, though it did specify the consequences if the Chickasaw people declined to extend citizenship. Following the Treaty's ratification, the Chickasaw Nation memorialized its people's choice not to extend citizenship and to expressly relinquish claim to compensation for the land cession. *E.g.*, An Act Confirming the Treaty of 1866, Chickasaw Nation Legislature, November 9, 1866. This memorialization was not a defiance of a treaty obligation but merely the Chickasaw Nation's acting on a question in accord with the mechanism preserved and specified by the Treaty.

History, though, did not stop at 1866. Acceding to the pressures of its own citizens, the United States turned to a new campaign, one intended to overcome the legal and political rights of the Native Nations of Indian Territory so a new state could be formed. As part of this post-war campaign, waves of speculators and settlers flooded into the Territory, and Chickasaws were soon minorities in their own country. Within another two generations or so, the United States again wrested control of Indigenous lands, and the Chickasaw Nation's treaty homeland was allotted—to Chickasaw citizens and resident Freedpersons alike. The remainder fell to the settlers and speculators, and the way was cleared for Oklahoma statehood.

In the midst of this chaos, disputes arose concerning Freedperson rights to Chickasaw Nation citizenship, and Congress directed the United States and Chickasaw Nation to obtain a final disposition of the matter in the federal courts. [An Act to ratify and confirm an agreement with the Choctaw and Chickasaw tribes](#), 32 Stat. 641, 649-50, Chap. 1362, § 36 (July 1, 1902) (“Authority is hereby conferred on the Court of Claims to determine the existing controversy respecting *the relations of the Chickasaw freedmen to the Chickasaw Nation and the rights of such freedmen in*

the lands of the Choctaw and Chickasaw nations under the third article of the treaty of eighteen hundred and sixty-six between the United States and the Choctaw and Chickasaw nations, and under any and all laws subsequently enacted by the Chickasaw legislature or by Congress.” (Emphasis added.); *cf. id.*, §§ 37-40 (directing process).¹

Taking up the resulting litigation and reviewing the Treaty, statutes, and the actions of the parties, the United States Court of Claims concluded that Freedpersons’ “relation to the Chickasaw Nation is, as the treaty expresses, the same as citizens of the United States in the nation,” i.e., not Chickasaw citizens. [*United States v. Choctaw Nation*](#), 38 Ct. Cl. 558, 568-69 (1903). The following year, the United States Supreme Court affirmed the Court of Claims’ ruling, in total. [*Chickasaw Freedmen*](#), 193 U.S. 115 (1904).

In so ruling and resolving the dispute, both courts recognized Congress made no independent attempt, by legislation or otherwise, to vest Freedpersons with citizenship. *Chickasaw Freedmen*, 193 U.S. at 124-25; *Choctaw Nation*, 38 Ct. Cl. at 567. Nor was such citizenship required by the treaty, which instead provided a mechanism for *potential* citizenship, i.e., “a means whereby freedmen might, by consent of the tribe and the voluntary action of the former slaves, become members” of the Chickasaw Nation. *Choctaw Nation*, 38 Ct. Cl. at 566.

With this Treaty and the judicial construction of it in mind, it is not disputed that the Chickasaw Nation did not vest Freedpersons with Tribal citizenship. Nor is it disputed that, as consequence, the Chickasaw people waived claim to compensation for the land cession imposed

¹ The Chickasaw Nation and Choctaw Nation share a close treaty relationship, starting with the Removal Era treaties of the 1830s which vested them with undivided interests in the realty of the secured treaty territory. Both nations are also signatory to the same 1866 Treaty with the United States, and both nations were involved in the litigation authorized by the 1902 act. While the litigation only ruled on citizenship questions relating to the Chickasaw Nation, its disposition affected Chickasaw and Choctaw interests in the undivided treaty territory. Accordingly, the Choctaw Nation was a named party in the suit, along with the Chickasaw Nation.

by the Treaty. Nor can it be disputed that today, as in 1866 and 1904, Freedpersons' "relation to the Chickasaw Nation is, as the treaty expresses, the same as citizens of the United States in the nation." *Id.* at 568-69. This is the authoritative judicial construction of the Treaty and its operation. It remains the undisturbed law today, and it responds to the Committee's inquiry.

Treaties matter. As provided in the United States Constitution, treaties are the supreme law of the land, though they are subject to construction and enforcement by the federal courts. The United States legal system produced the Treaty and later adjudicated its meaning. Mindful of the tumult of history and the importance of ongoing processes, the Chickasaw Nation holds true to its Treaty and the judicial construction of it—an adjudication that's not been challenged for over a century and to which the parties remain bound. None of us can say what the future will provide, but we can (and do) know how the law stands.

Chickasaw history, like other histories, involves set back and growth, trial and progress. Relying on its sovereignty and rights to self-determination, the Chickasaw Nation in its most recent generations has made progress in rebuilding its institutions of government. Today, the Chickasaw Nation employs thousands of people, both Chickasaw citizens and non-citizens alike. It invests in communities throughout its reservation, Oklahoma, and the region. The Chickasaw Nation is dynamic, and its work as a people is ongoing. It remains committed to continuing its work and will do so in good faith—in accord with the law and its people's right to sovereign self-determination.