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Testimony on “*Authorization, standards, and procedures for whether, how, and when Indian Tribes should be newly recognized by the federal government*”

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I. Introduction

Chairman Young, Honored Committee Members, I am Chairwoman Ann Denson Tucker of the Muscogee Nation of Florida, Florida Tribe of Eastern Creek Indians. We are the people known as Petitioner 32 in the Office of Federal Acknowledgement. In 1978, when Part 83.7 was created to standardize Tribal recognition, there were 40 Tribes with evidence already filed in the Bureau of Indian Affairs. We were one of those Tribes.

My Tribe needs and deserves federal recognition, and we appreciated this opportunity to respond to the Committee’s interest in reviewing the standards and procedures in the Bureau of Indian Affairs (BIA) current recognition procedures.

At this point, the Tribe has exhausted its resources. We are unable to pursue or respond to the BIA's failed process in the manner that has become the fiscal norm. It is a process that requires applicants to re-do and re-file papers and to comply with rules, regulations, and interpretations that did not exist when our initial application was made. Muscogee Nation has worked, waited, struggled, and sacrificed in this latest process for over 30 years. At every turn, we have learned that the BIA tribal recognition process is enormously burdensome, confusing and non-applicable to some Tribal Histories. It is not just the process that is difficult; it is the effect of understanding and having to respond to new legal precedents set in federal courts by other petitioners or interested parties - whose histories are nothing like ours – but who have encountered serious problems trying to make an all-or-nothing system work. These cases become the mainstay for driving a broken administrative process. While the criteria were originally created as standardized guidelines by a world of academia and specialized experts, the fact is that they have become mandatory criteria used to make judgment on Indian Tribes that do not have standardized histories.

II. Historical Tribal Background

The Muscogee Nation of Florida ("Tribe"), also known as the Florida Tribe of Eastern Creek Indians, is a tribe of Creek Indian people whose home is centered in Bruce, Walton County, Florida. It is impossible to separate the Tribe and legal discrimination that began in Florida in the 19th century. The Creek predecessors of the Tribe signed 11 treaties with the United States between 1790 and 1833 that lead to the forced removal of the Tribe's ancestors from their

traditional homelands in Georgia, Alabama, and Florida. The modern tribe arrived in historic Walton County as early as 1837 in an effort to escape these removal policies. The Bruce Community was ultimately established in 1861 after a long migration down the Choctawhatchee River from an Indian enclave north of Daleville, Alabama.

The Tribe constituted a small group of Creek Indian people who lived together, worked together, married one another, buried one another, and kept the ceremonies and traditions through the harshest of circumstances. The community in Bruce had its own church established in 1912 which is designated as a Native American Methodist Church, its own school established in 1890, two separate cemeteries which are still used today, and known leaders.

Even though the Tribe had to adapt to the 1852 laws, the Muscogee Nation of Florida continued to function. Migration into Florida required that the Tribe re-establish traditional grounds, communities, lifestyles, and governance after moving to the Bruce area. The General Assembly of the State of Florida determined to halt Indian migration and residency by adopting stringent discrimination laws. During the 1850s, it enacted a sweeping range of "Jim Crow" laws that made it virtually impossible for the Tribe to operate normally. In 1850 and 1851, statutes were passed to make it illegal to trade with Indians and illegal for Indians to possess firearms to hunt. By 1852, it became illegal for Indians to be Indian, under penalty of death, unless they were confined to a Reservation, which the State of Florida did not have. The passage of this law made it difficult for the Tribe to openly embrace their cultural heritage and community, and it was forced to bury its government, traditional ceremonies, and culture inside its tiny community to be able to survive in a place that did not allow for 'Indian'. Those who interacted with the Tribe could not share their knowledge or experiences about the Tribe, lest they be found in violation of the harsh laws forbidding trade or contact with Indians.

Despite this, the Tribe survived the decades of Jim Crow laws and maintained its traditional form of leadership, a subsistence type of living, and shared economic practices. In 1947 the Bureau of Indian Affairs announced that a Land Claim Settlement would be made that impacted historic Creek nation. It has now been 65 years since our community leader, J.J. Ward, wrote to the BIA and explained that our people deserved compensation for lands taken under the Treaty of Ft. Jackson. The BIA's response, which is on file in the Federal Archives, was curt and dismissive:

"You are mistaken. You cannot possibly be who you say you are because the members of that Tribe are either dead or removed..."

The people of the Bruce Community became parties to a land claim litigation, and in 1957 it was determined that Creek Indians in the Southeast would be eligible to share in the settlement. The Attorney for this litigation, Lenoir Thompson, was quoted in an article filed with the Washington Post in 1957 when the judgment was finalized. The article named two elder members of the Bruce Community that would be included in the settlement. It took until 1971 for letters to be issued from the Department of Interior verifying that we had been part of the historic Creek Confederacy. J.J. Ward, who served the Bruce community as its leader for over 60 years, had been dead for 2 years by the time the letter arrived. After the letters verified Indian people, the State of Florida created a state-funded Council called the Northwest Florida Creek Indian Council on Florida Statute 285. The Muscogee Nation of Florida Tribal Council had members that were appointed by Governor Bob Graham to service for improving in the quality of life of

Creek Indian people. From that Council, the Florida Tribe of Eastern Creek Indians, which is now, Muscogee Nation of Florida, was assisted in becoming more formalized as a government.

III. External Identification by the OFA and the effect of Jim Crow Laws

The Tribe has spent over 30 years trying to satisfy federal documentation standards. At virtually every step of the process, the operation and aftermath of the 19th century Jim Crow laws have made it impossible for the Tribe to satisfy document reviewers in the Office of Federal Acknowledgment (OFA) at the Department of the Interior.

The Tribe has shown tremendous flexibility, and has spent vast Tribal resources, trying to meet OFA requirements related to genealogy, proof of tribal membership, and evidence related to tribal government. Unfortunately, all of these efforts are for naught because federal regulations require, as a threshold issue, that the Tribe produce specific types of evidence in order for the application for federal acknowledgment to be processed.

The first standard, identified as "Criterion 83.7(a)", is the "external identification of the group as an American Indian entity on a substantially continuous basis since 1900." This criterion has two parts. First, a tribe must produce evidence of "continuous Indian identity" since 1900 by providing certain types of documentary evidence, specifically "identification by Federal, State and local governments, scholars or other writers, in newspapers, and/or by recognized tribes or national organizations."¹ Second, a tribe must have evidence that demonstrates continuity, which OFA has interpreted as meaning the ability to produce acceptable documentary evidence for every ten-year period of time. If a tribe cannot produce the specific documents required by OFA, their application is taken out of the queue for consideration and held in regulatory limbo indefinitely. Or, worse, an expedited determination and finding is issued to eliminate the petitioner.

It is impossible for the Tribe to meet all aspects of Criterion 83.7 (a). As a result of the legal operation of the Jim Crow laws, the Tribe cannot produce documents showing that, at least every ten years, scholars, governments, missionaries, and the media recognized the Indian identity of the Tribe. Florida law essentially made it a crime punishable by death to be an Indian. Further, not only were the bulk of Walton County records prior to 1917 destroyed in courthouse fires, state and federal records were distorted because they required that all Tribe members be listed as either white or black. Because Tribe members were considered white or black, and lived in an isolated, poor, and unincorporated Northwest Florida community, there was no scholarly or journalistic interest in the Tribe. In fact, state and federal records did not correctly reflect the race of Indian people in North Florida until the 1971 letters were issued for the Treaty of Fort Jackson and at that point, Tribal Members were racially identified as "Others". There was no race for Indian.

It is a genuine tragedy that this legacy of discrimination continues to haunt the Tribe because mandatory standards for federal acknowledgement require the very types of evidence that Jim Crow laws made impossible. What Muscogee Nation of Florida knows about the current

methods used in the recognition process, is that the lack of select standardized documentation for every decade since 1900 from one of the most remote areas of Northwest Florida, does not mean it has not continuously existed as an Indian Tribe. What it means is that the type of evidence used to document external identification cannot reflect who Tribal Members are because in 1852, it became illegal, under penalty of death, to be an Indian living freely in the State of Florida, a law that remained on the books until the 1964 Civil Rights Act. Members of Muscogee Nation of Florida were racially exterminated on government paper.

IV. The Tribe and the Federal Acknowledgment Process

The Tribe has been, for over three decades, seeking recognition from the U.S. government through the Administrative Process. As tribal members struggle economically, and the costs associated with this process continue to grow, it has become increasingly clear that Congress needs to act to address this situation to treat this government with a proper measure of respect and concern, in light of government actions in the past.

As Congress has stated: "Recognized" is more than a simple adjective; it is a legal term of art. It means that the government acknowledges as a matter of law that a particular Native American group is a tribe by conferring specific legal status on that group...This federal recognition is no minor step. A formal political act, it permanently establishes a government-to-government relationship between the United States and the recognized tribe as a "domestic dependent nation," and imposes on the government a fiduciary trust relationship to the tribe and its members. Concomitantly, it institutionalizes the tribe's quasi-sovereign status, along with all the powers accompanying that status such as the power to tax, and to establish a separate judiciary. Finally, it imposes on the Secretary of the Interior specific obligations to provide a panoply of benefits and services to the tribe and its members. In other words, unequivocal federal recognition of tribal status is prerequisite to receiving the services provided by the Department of the Interior's Bureau of Indian Affairs and establishes tribal status for all federal purposes. (H.R. Rep. 103-7811 103rd Cong., 2nd Sess. (1994) at 2; 1994 U.S.C.C.A.N. 3768, 3769)

The types of services that the Tribe needs, and is currently not able to receive because of delayed recognition, are many: education, social services, law enforcement, courts, real estate services, agriculture and range management, and resource protection. A recent example is the BP Oil Spill that impacted the Tribal area – with the Tribal Council unable to respond to critical side effects of this devastating event. The impact of the spill on the mouth of the Choctawhatchee River and the aquifer that is used for well water by families, as well as local mounds, have not been tested by the Tribe because there is no Tribal Environmental Office nor funding for independent testing for a non-federal Tribe. Likewise, with the passage of Native American Graves Protections and Repatriation Act, the Tribe no longer has the right to repatriate as it did for the State of Florida until the law was passed. The importance of recognition cannot be overstated. It affects every aspect of Tribal Life.

The Tribe has endured forced relocation, aggressive and open government discrimination, and years of neglect by government bureaucrats. As the Tribe continues to work diligently to address pressing economic, education, and resource issues they should be able to avail themselves of

programs designed to assist in those endeavors, and federal recognition is necessary for that to happen.

The tribe has undertaken a three-decade journey to achieve recognition through the administrative process, and at every turn this process has proven to be unfair, inconsistent, and ill-suited to address the very real history and challenges of the Muscogee Nation of Florida. In addition, the Tribe is a poor Tribe – one that is not fiscally supported by outside interests. The Tribe cannot ‘compete’ in the current day recognition methods when it cannot hire and compensate the necessary ‘experts’ that have to be used - be it in the process or in court. While we wait, life for Indian people is getting more bureaucratic and the process made more difficult by the same office that is supposed to help Indians.

The following is a brief summary of the Tribe's efforts to achieve recognition through the Administrative process:

1976-1977—The Tribe submits an initial petition for recognition. The petition is returned because of changes to agency regulations creating Chapter 25, Part 83.7. Petitioner number 32 is assigned

1978-1995—The Tribe prepares three new separate petitions for recognition. The first two petitions are not submitted because of continuing changes to agency regulations and policies and finding and determinations specifically relating to Southeastern Tribes. The third version is submitted to the BIA in June of 1995.

1996—The Tribe receives a "Technical Assistance" letter from BIA requiring additional research and document preparation. The Tribe submits its response to this letter line-by-line in 2002 with supporting evidence.

2003 – The Tribe is placed on the "Ready, Waiting for Active Consideration" list. At the same time, the Tribe is notified that because of additional changes to agency regulations the Tribe needs to electronically submit in excess of 840,000 pages of documents.

2004 to present – The Tribe actively pursues Congressional Recognition as the only feasible method to be recognized in a broken process. Testimony is given to the Senate Committee on Indian Affairs at three separate hearings.

2011 – The Tribe is moved to Active Consideration and submits a certified the Tribal Roll with a fourth heavily revised petitioning document.

Muscogee Nation of Florida has expended an untold amount of money and time trying to satisfy the BIA. After each attempt, the Tribe finds there are new demands and no substantive action because interpretations of regulations are subject to change. As the 34th anniversary of the filing of the initial petition approaches, the Tribe sees the most recent failure of the process in another ‘old’ Tribe who received a positive OFA finding but was denied recognition by the Secretary of the Interior. It has become clear that the agency process is terminally defective.

While there are many examples cited in past hearings on the bureaucratic process, two problems beyond the interpretation of the 'mandatory' criterion are also evident to this Tribe:

1) *the undue and unknown influence by "parties of interest" before a factual determination is made;*

The OFA no longer defers comments by parties opposing acknowledgment petitions until OFA has made its factual determination. 'Interested Parties' are notified when the Tribe moves to Active Consideration and can oppose petitions before the BIA has fully considered the Tribe's evidence. In the case of Muscogee Nation of Florida, the Governor's Office, who was supposedly notified of the Tribe being moved to Active Consideration, had no record of ever receiving a letter from the BIA per conversations last week with the General Counsel's Office.

2) *the OFA's unwillingness to provide documentation that it possesses to the Petitioner that could help its effort.*

It is noted that the sheer magnitude of the BIA's requirements regarding the format, size, and amount of documentation and the cost of preparing/filing a petition for acknowledgment, especially by a poor Tribe, is prohibitive. If evidence of precedents to recognition are not available to the Tribal Petitioner but is in OFA's possession, OFA could potentially reject a Tribe's petition for lack of evidence rather than supplementing the Tribe's petition with evidence the OFA has in its files.

The Muscogee Nation of Florida was moved to Active Consideration on December 5, 2011. The Tribe again audited all records and filed a roll with members who met stringent membership criteria directly attached to a 1912 membership roster of the Bruce Methodist Church or to the Bruce School. The roll was certified by the Tribal Council Resolution and then was requested to be re-certified using the form letter from the Department of the Interior. Since the certification, there has been no contact from any of the people assigned to review the petitioning data. There is concern that Jim Crow Laws and the inability to furnish 'proper paper' to Criterion 83.7 (a) will result in no on-site visit to the Tribal Community by the OFA, despite the 34 year wait and an expedited finding will be issued based on the same criterion that disregards the unique historical issues this Tribe has faced from the statutes of the State of Florida.

V. Conclusion

As each year passes waiting for the BIA to resolve this issue and the Tribe struggles to care for its members' needs, it is becoming more and more difficult to imagine a scenario where Tribal members will receive the recognition they deserve from the government. As such, the Tribal Council reviewed the report filed by the General Accounting Office in 1999 and voted to pursue Congressional recognition. When the mechanism used by the Agent is broken, the only recourse a Tribal Government has is to go to Congress. It is the means that has had to be used with many other Tribes that are east of the Mississippi River. Put simply, it is unreasonable for the BIA to have a regulatory review process that takes decades to complete, requires Tribes to pay

exorbitant sums for attorneys, historians, genealogists, archaeologists and other experts and relies on a body of regulations that constantly change, making compliance impossible.

Federal recognition is not only about self-determination. It is about the Tribe's very survival as a community of Indian people. This Tribe has the same desperate needs that it had before there was a 1978 process: housing, health care, education, elderly services and emergency management. These needs – critical to the survival of our Tribe's members -- have been compounded by the passage of time and the BIA's neglect. The last of the tribal leaders who began the struggle as young people to share in the land claim settlements are now in their 80s. Our elders deserve to be federally recognized before they have all passed away.

The Tribe has a 9-acre land base and has 13 acres of 4000-year-old shell mounds that it keeps in protective trust for the benefit of all people. The B.P. oil spill and collapse of the housing and development market led to a depressed economy in the surrounding communities where the Tribe calls home over the past three years. In 2010, the Tribal Council passed a Resolution to establish "Rural Relief", an emergency program that includes a food pantry and USDA commodities distribution center, an affordable health clinic, an at-risk children's program, and a thrift store for clothing. The Tribe furnishes staple goods to feed over 400 people every 3 weeks (only 6% are Indian) through local partnerships, a foundation grant, and Tribal volunteers. Among the current members of the Tribal Council, only three can afford health insurance.

Muscogee Nation of Florida, Florida Tribe of Eastern Creek Indians has the support of local governmental leaders, businesses, schools, churches, and hundreds of individuals who have signed petitions in support of Congressional recognition. The Tribe is not seeking Trust Land in this legislation, permission to initiate gambling operations, nor any other controversial result. Instead, the Tribe is seeking acknowledgement of the simple fact that it is, indeed, an Indian Tribe. The Tribe seeks justice and the right of self-determination that is required to access federal programs, grants, and foundations that will enable us to improve the lives of our people and protect the future generations.

Thank you for the opportunity to represent the unique issues of the Muscogee Nation of Florida to this Committee. The Tribal Government and people of Muscogee Nation of Florida respectfully requests this Committee to pass H.R. 2591 introduced by Congressman Jeff Miller and allow our Tribal Council begin to move forward as a sovereign government.