

**IN THE UNITED STATES DISTRICT COURT OF THE
NORTHERN DISTRICT OF OKLAHOMA**

THE CHEROKEE NATION,)	
Plaintiff,)	
)	Case No. 11-CV-648 TCK TLW
v.)	
)	
RAYMOND NASH, LARRY WASSON, ROBERT)	
ALLEN, KATHY WASHINGTON, LISA DUKE, KEN)	
SALAZAR, SECRETARY OF THE INTERIOR, AND THE)	
UNITED STATES DEPARTMENT OF THE INTERIOR.)	
Defendants.)	

MOTION FOR LEAVE TO FILE
AMENDED COMPLAINT FOR DECLARATORY RELIEF

Comes now the Plaintiff, the Cherokee Nation, and alleges and states:

1. The Cherokee Nation has not previously sought amendment of its Complaint, which was filed on Feb. 3, 2009. This case was transferred back from the District of Columbia on September 30, 2011. On February 27, 2012, this Honorable Court entered an Order setting deadlines, including a deadline for amended pleadings, or motions for leave to file amended pleadings, by April 23, 2012.
2. The proposed Amended Complaint by the Cherokee Nation does not change the original parties, nor add causes of action. It changes the cause of action from a focus upon federal abrogation of the Treaty, to a focus on interpretation of the Treaty language as it was meant by the parties at the time, and as later interpreted by federal statute and cases.
3. Under FRCP 15(a)(2), the Nation must have written consent of the parties or leave of this Court to Amend. While the parties (the Freedmen Defendants and the United

States of America) have been consulted about an Amended Complaint, they have not had sufficient time to review it in order to give written consent, or objection.

Therefore, leave of this Honorable Court is sought.

4. The proposed Amended Complaint is attached hereto.

Respectfully submitted:

s/ A. Diane Hammons

A. Diane Hammons
Campbell & Tiger, PLLC
2021 S. Lewis, Ste. 630
Tulsa, OK 74104

dhammons@campbelltiger.com
(918)30101172

and

s/ Todd Hembree

Todd Hembree, Attorney General
Cherokee Nation
P. O. Box 948

Tahlequah, OK 74465
todd-hembree@cherokee.org
(918) 453-5652

CERTIFICATE OF SERVICE

I hereby certify that on April 23, 2012, I electronically transmitted the Amended Complaint to the Court via ECF for filing and also electronically transmitted a copy of the same via email to the following:

Amber Blaha
Jonathan T. Velie
Alvin Dunn
Cynthia Robertson

Respectfully submitted,

s/ A. Diane Hammons

A. Diane Hammons
Campbell & Tiger, PLLC
2021 S. Lewis, Ste. 630
Tulsa, OK 74104

dhammons@campbelltiger.com
(918)30101172

and

s/ Todd Hembree

Todd Hembree, Attorney General
Cherokee Nation

P. O. Box 948

Tahlequah, OK 74465

todd-hembree@cherokee.org

(918) 453-5652

**IN THE UNITED STATES DISTRICT COURT OF THE
NORTHERN DISTRICT OF OKLAHOMA**

THE CHEROKEE NATION,)	
Plaintiff,)	
)	11 CV-0648 TCK TLW
v.)	
)	
RAYMOND NASH, LARRY WASSON, ROBERT)	
ALLEN, KATHY WASHINGTON, LISA DUKE, KEN)	
SALAZAR, SECRETARY OF THE INTERIOR, AND THE)	
UNITED STATES DEPARTMENT OF THE INTERIOR.)	
Defendants.)	

AMENDED COMPLAINT FOR DECLARATORY RELIEF

Comes now the Plaintiff, the Cherokee Nation, and alleges and states:

1. The Cherokee Nation is a sovereign Indian nation recognized by the United States of America.
2. The Defendants are the Secretary of the Interior of the United States of America (the Secretary), and the United States Department of the Interior, who are responsible for the administration of the Treaty between the United States and the Cherokee Nation, July 19, 1866 , 14 Stat. 799 (“1866 Treaty”), subsequent acts of Congress applicable to the 1866 Treaty and benefits to citizens of the Cherokee Nation based on their status as citizens of the Nation, and Raymond Nash, Larry Wasson, Robert Allen, Kathy Washington, and Lisa Duke (the “individual defendants”), who as non-Indian Freedmen descendants resident in this federal judicial district publicly claim right as alleged citizens of the Cherokee Nation under the Treaty of 1866, and benefits based on their alleged status as citizens of the Cherokee Nation.
3. This action is brought pursuant to the Declaratory Judgment Act, 28 U.S.C. 2201 to resolve an actual case and controversy between the Cherokee Nation and the individual defendants

and the United States arising from the 1866 Treaty and a federal statute as to whether non-Indian Freedmen descendants have a right to citizenship in the Cherokee Nation and benefits administered by the Secretary attendant to that legal status.

4. Subject matter jurisdiction is based on 28 U.S.C. 1331 and 28 U.S.C. 1362.
5. Venue is proper in this District pursuant to 28 U.S.C. 1391(b).
6. Prior to European contact, ties of kinship were the overwhelming connection among Cherokees of different communities and all claims to citizenship rested on blood or marriage. As European colonists began settling in North America, the Cherokee Nation struggled to maintain the identity and territory.
7. European colonists introduced chattel slavery to the Cherokee Nation, believing that slave ownership would “civilize” the Cherokee Nation. The Cherokee Nation voluntarily abolished slavery in 1863, almost two years before the end of the Civil War. The former slaves became known as the Freedmen.
8. In 1866, the Cherokee Nation signed the 1866 Treaty with the U.S. Government. Article IX of the 1866 Treaty provided that the Freedmen and their descendants were to have all the “rights of native Cherokees.” Although the 1866 Treaty did not require that the Freedmen be given citizenship in the Cherokee Nation, the Cherokee Nation, as an act of sovereignty, voluntarily amended the Cherokee Nation Constitution in 1866 to grant citizenship to the Freedmen, Intermarried Whites and members of certain foreign tribes residing in the Nation.
9. On March 3, 1871, the U.S. Government ceased its policy of entering into treaties with the Cherokee Nation.
10. As part of its public policy aimed at destroying Indian government and promoting assimilation through an allotment of commonly held tribal land to individual tribal members, between 1898 and 1907 the U.S. Government created four rolls: Cherokee by Blood, Delaware, Intermarried Whites and Freedmen. Collectively, these separate rolls became

known as the Dawes Rolls, so named for the chairman of the federal commission delegated to perform the census.

11. In 1906, pursuant to its then policy of dealing with Indian tribes by unilateral statute rather than through the bilateral treaty making process, Congress passed several acts including the Five Tribes Act, ch. 1876, §3, 34 Stat. 137 (1906) (“Five Tribes Act”) modifying and/or construing the 1866 Treaty.
12. As a result of the U.S. Government’s action in modifying the Treaty of 1866 by the Five Tribes Act, Freedmen not living in the Cherokee Nation at that time did not possess any rights of native Cherokees conferred by the 1866 Treaty.
13. The Secretary is responsible for administering programs providing benefits to citizens of the Cherokee Nation.

COUNT I

CLAIM FOR DECLARATORY JUDGMENT

THAT THE NON-INDIAN FREEDMEN DO NOT CURRENTLY HAVE RIGHTS TO CITIZENSHIP WITHIN THE CHEROKEE NATION BASED ON THE TREATY OF 1866

14. A case and controversy exists between the Cherokee Nation and the non-Indian Freedmen descendant individual defendants as to whether the Treaty of 1866 currently mandates that non-Indian Freedmen descendants, including the individual defendants, enjoy the rights of citizens of the Cherokee Nation.
15. The non-Indian Freedmen descendant individual defendants contend that the Treaty of 1866 guarantees to them the current right of citizenship within the Cherokee Nation and to all the benefits of such status, including the benefits administered by the Secretary.
16. The Cherokee Nation contends that the Treaty of 1866 did not guarantee to Freedmen and their descendants eternal unimpeachable rights to citizenship within the Cherokee Nation.

The Five Tribes Act and other federal statutes modified the specific provisions of the Treaty and also acknowledged that it was the Cherokee Constitution that granted citizenship to the Freedmen.

17. If the Cherokee Constitution was the organic document that granted citizenship to Freedmen, then a valid amendment to the Cherokee Constitution may remove that citizenship.
18. The Cherokee Nation is entitled to a resolution of this case and controversy in its favor through a judgment of this Court declaring that the Treaty of 1866 , including subsequent federal statutes and case law, does not bestow upon current descendants of Freedmen a right to citizenship within the Cherokee Nation that cannot be altered by the Cherokee Constitution.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff the Cherokee Nation requests the Court to enter its declaratory judgment granting the relief prescribed in Paragraph 18 above, along with all other relief to which it is entitled, including but not limited to its costs.

Respectfully submitted:

s/ A. Diane Hammons
A. Diane Hammons
Campbell & Tiger, PLLC
2021 S. Lewis, Ste. 630
Tulsa, OK 74104
dhammons@campbelltiger.com
(918)30101172

and

s/ Todd Hembree
Todd Hembree, Attorney General
Cherokee Nation
P. O. Box 948
Tahlequah, OK 74465
todd-hembree@cherokee.org
(918) 453-5652

CERTIFICATE OF SERVICE

I hereby certify that on April 23, 2012, I electronically transmitted the Amended Complaint to the Court via ECF for filing and also electronically transmitted a copy of the same via email to the following:

Amber Blaha
Jonathan T. Velie
Alvin Dunn

Respectfully submitted,

s/ A. Diane Hammons
A. Diane Hammons
Campbell & Tiger, PLLC
2021 S. Lewis, Ste. 630
Tulsa, OK 74104
dhammons@campbelltiger.com
(918)30101172

and

s/ Todd Hembree
Todd Hembree, Attorney General
Cherokee Nation
P. O. Box 948
Tahlequah, OK 74465
todd-hembree@cherokee.org
(918) 453-5652