UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LEATRICE TANNER-BROWN, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
DEBRA HAALAND,	)	
Secretary of the Interior,	)	Civil Action No. 1:21-cv-00565
	)	
And	)	
	)	
Bryan Todd Newland,	)	
Assistant-Secretary – Indian Affairs,	)	
	)	
Defendants.	)	
_____	)	

PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

This action, at its core, is simple. The United States has a duty to account for royalties derived from land allotted to the putative plaintiff class members under ante-bellum Indian treaties that normalized relations between slave holding Indian Tribes who had fought with the Confederacy and the United States. Plaintiffs in this action are the *legal representatives* of certain Freedmen – African-Americans formerly held in bondage by members of the so-called Five Civilized Indian Tribes, who received allotments pursuant to these ante-bellum treaties during the period 1908 through 1934, while under the age of eighteen. The Act of May 27,1908 transferred jurisdiction of land, persons and property of Freedmen minors from the Department of Interior to local probate courts in Oklahoma. The Act however reserved jurisdiction in the Department of Interior and mandated that the Secretary monitor the conduct of the local courts in relation to Freedmen minors, which the Secretary failed to do. By reason of the nonfeasance of the Secretary of Interior, the allotments of Freedmen minors , the plaintiffs here, were subjected to widespread graft and abuse by locally appointed guardians who free from federal oversight, were positioned to swindle royalties from oil, gas , timber, hay and rail leases on allotted lands. This action is brought to require the Secretary to account to the Freedmen who are protected by the Act of May 27,1908, for royalties or related proceeds derived from their allotments. The treatment of these Freedmen by the United States is particularly repugnant because during the relevant period the United States was cognizant of the imminent threat of abuse by local interests and therefore retained restrictions against alienation on allotments of so-called Blood Indians who had rebelled against the United States while concurrently ignoring the interests of the lesser educated and more vulnerable Freedmen who had been hold in bondage . This is a continuing and unremedied scar on the history of this Country. ***The present action was instituted to compel Defendants to comply***

with their statutorily created fiduciary duties under the Act of May 27, 1908, 35 Stat. 312 (hereinafter, the "Act" or "1908 Act") with respect to lands allotted to Freedmen minors, who were enrolled members of the Five Civilized Indian Tribes.[1] The Five Civilized Tribes included the Cherokees, Chickasaws, Choctaws, Creeks, and Seminoles.[2]

The fact of both bondage of the Freedmen and their Indian land rights is beyond dispute. The federal census of Indian Territory in 1860 counted 2,511 slaves held by the Cherokees and 13,821 "blood" Cherokees.[3] Many of these slaves "were culturally Cherokee, speaking only the Cherokee language and living immersed in Cherokee life and traditions," and some slaves were of mixed Cherokee and African descent.[4]

> Although it is a grievous axiom of American history that the Cherokee Nation's narrative is steeped in sorrow as a result of United States governmental policies that marginalized Native American Indians and removed them from their lands, it is, perhaps, lesser known that both nations' chronicles share the shameful taint of African slavery. This lawsuit harkens back a century-and-a-half ago to a treaty entered into between the United States and the Cherokee Nation in the aftermath of the Civil War. In that treaty, the Cherokee Nation promised that "never here-after shall either slavery or involuntary servitude exist in their nation" and "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 . . . ." Treaty With The Cherokee, 1866, U.S.-Cherokee Nation of Indians, art. 9, July 19, 1866, 14 Stat. 799 [hereinafter 1866 Treaty].[5]

Cherokee Nation v. Nash, 267 F. Supp. 3d 86, 89-90 (D.D.C. 2017).

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[1] *See* Daniel F. Littlefield, Jr., *The Cherokee Freedmen: From Emancipation To American Citizenship* (1978) at 8-9.

[2] *Id.*

[3] Michael Doran, *Negro Slaves of the Five Civilized Tribes*, Annals of the Association of American Geographers 68.3 (Sept. 1978) at 347.

[4] Fay A. Yarbrough, *Race and the Cherokee Nation: Sovereignty in the Nineteenth Century* (2008), at 71.

[5] Following the Civil War, each of the Five Civilized Tribes, all of which had held slaves and allied with the Confederacy, negotiated a treaty to re-establish its relationship with the United States. The Cherokee Treaty was the last of these treaties to be signed, in July 1866.

Due to the horrific failure of the United States to exercise fiduciary oversight in relation to the Freedmen minors, the restricted lands and royalties derived therefrom and owed to duly enrolled minors were not properly managed [6] Rather, the minors were exploited and their assets were dissipated or stolen by unscrupulous individuals who coveted Freedman land located in oil rich areas ceded to the Five Civilized Tribes under post-Civil War treaties.

The United States Department of the Interior and its Secretary once again in this lawsuit seek to evade responsibility for over a century and a half of negligence towards, blatant racism against and breaches of fiduciary duty owed to the African slaves held in bondage by the Five Civilized Indian Tribes. The Defendants' Motion is their latest attempt to escape liability for the shameful record of inaction and contempt for their statutorily mandated duty to monitor and account for proceeds from oil, gas and related leases on restricted land allotments held by Plaintiffs' predecessors and members and, in the particular case of Ms. Tanner-Brown, her deceased grandfather George Curls for whose estate she is the *lawfully appointed probate representative*.

In order to continue to evade responsibility, Defendants contend in their Motion to Dismiss: (1) that the Complaint fails to adequately plead Article III standing; 2) that the claims are barred by the statute of limitations; and 3) that the 1908 Act does not include a duty to account from

[6] *See Parker v. Richard*, 250 U.S. 235, 239-240 (1919) ("Under the Act of 1908, as already shown, leases of 'restricted lands' for oil and gas mining may be made with the approval of the Secretary of the Interior, under regulations prescribed by him, 'and not otherwise.' The present lease was made and approved under that provision. The land was then restricted and the restrictions have not since been removed. Thus the event which the regulations and the lease declare shall terminate the supervision by the Secretary of the Interior of the collection, care and disbursement of the royalties has not occurred." (emphasis added).

which Plaintiffs could state a claim for relief. Defendants are wrong and misguided on every point. Plaintiffs on behalf of the Freedmen have demonstrated standing to sue by (1) alleging a personally suffered injury-in-fact due to the putative action (or inaction) of the Defendants; (2) demonstrating a causal link between the injury and the actions of the defendant; and (3) presenting an injury redressable by favorable judicial action.

Based on the allegations in the Complaint – all of which are beyond dispute on this Motion to Dismiss – Defendants have breached their fiduciary obligations owed to Plaintiffs by failing to properly manage and account for their property. To add further insult to this injury, Defendants in their Motion mischaracterize and misstate the law to avoid adjudicating this case on its merits. Specifically, Defendants' insistence that Plaintiffs have no standing or claim is flatly contradicted by the plain language of the 1908 Act which, among other things, guaranteed the Freedman minors whom Plaintiffs represent the protection of the Secretary of the Interior. The Act created Defendants' fiduciary duty to guard the property and funds of Plaintiffs' decedents and members against waste, dissipation and deterioration. As a result, because Defendants abdicated this duty **-- to the point of even refusing to take the preliminary step of an accounting of this property and funds** – they now must have a duty to treat these Freedmen fairly and finally account .

Defendants also urge dismissal of Plaintiffs' claims based on the statute of limitations, but that issue is not properly considered at this procedural stage. The limitations defense is also devoid of merit in any event, for numerous reasons. The applicable statute of limitation has not run against Plaintiffs' claim. Tragically, because of endemic racism, and lack of due process, Plaintiffs have never had a full and fair opportunity to litigate their claims. Defendants also misconstrue application of the Administrative Procedures Act, ("APA") to this case. Plaintiffs have invoked § 702's waiver of sovereign immunity because Congress intended it to be used in this manner, not

because their claim is brought under the APA. Defendants seek to avoid this waiver by urging the Court to apply law related to claims for judicial review under the APA. This action, however, is not a claim brought under the provisions of the APA to review an agency action; rather it falls within the clear contours of the waiver of sovereign immunity in the APA.

Finally, Plaintiffs state a cause of action in equity to enforce fiduciary duties arising from the trust relationship between the Freedmen and Defendants. In this case, the relief sought by Plaintiffs is an accounting, a claim that rests on legal obligations that clearly give rise to a cognizable claim. Contrary to arguments in the Motion to Dismiss, the statutes addressing the trust relationship between the Freedmen minors and Defendants unquestionably give rise to trust duties that can be enforced by this Court.

For all these reasons and others, as discussed in further detail below, the Court should deny Defendants' Motion to Dismiss and allow Plaintiffs to have their day in court.

II. PROCEDURAL HISTORY AND FACTUAL ALLEGATIONS[7]

During the Civil War, the Five Civilized Tribes (*i.e.*, the Seminole, Cherokee, Choctaw, Creek, and Chickasaw Tribes) kept slaves and allied with the Confederacy. See Compl. ¶ 13. Beginning in 1866, following the defeat of the Confederacy, the United States entered into a series of treaties and agreements with the Five Civilized Tribes that, among other things, emancipated the Tribes' slaves and provided rights for the emancipated slaves (known as the "Freedmen")

[7] Although Plaintiffs dispute the Defendants' characterization of historical facts throughout their "History of the Freedmen and Indian Allotments," Plaintiffs do not dispute the basic facts cited by Defendants regarding the occurrence of historical events and statements that were made. Plaintiffs incorporate by reference as if fully set forth herein **Exhibits A through H** filed with Plaintiffs' Memorandum Of Points And Authorities In Opposition To Defendants' Motion To Dismiss on January 13, 2015 (**ECF 16-1 through 16-22**) in Civil Action No. 1:14-cv-1065-RC (D.D.C.).

within the Tribes. *See id.; see also, e.g.*, Treaty of 1866, 14 Stat. 755 (Seminole); Treaty of 1898, 30 Stat. 567 (Seminole); Treaty of 1866, 14 Stat. 785 (Creek); Treaty of 1897, 30 Stat. 496 (Creek); Treaty of 1901, 31 Stat. 861 (Creek); Treaty of 1866, 14 Stat. 799 (Cherokee); Treaty of 1866, 14 Stat. 769 (Choctaw and Chickasaw). The treaties had a general common purpose between them, although their provisions varied. See Compl. ¶ 13.

The recent Opinion of the Supreme Court of the Cherokee Nation in *In Re: Effect of Cherokee Nation v. Nash, etc.*,[8] Case No. SC-17-07 (Feb. 22, 2021), succinctly describes the promise of equality and justice at last for the freed Blacks:

> On war-torn soil in Indian Territory during Reconstruction, thousands of miles from their respective homelands, the heartbeats of three First Nations, the Cherokees, the Shawnees, and the Delawares, and three continents of flesh tones and cultures, Native Americans, African Americans, and adopted or intermarried-European Americans, were forced to coalesce and weave together a single nation to be known by only one name henceforth: the Cherokee Nation. One hundred and fifty-five years after the 1866 Treaty,[9] native Cherokees must step fully into the promise they made "[o]n the far end of the Trail of Tears."[10] By doing so, the Cherokee Nation, as a whole, lifts itself into the 21st century and sheds the heavy weight of antebellum and the pervasiveness of racism and racial injustice in favor of equality and justice for all.
>
> **Unequivocally, Freedmen have rights equivalent to "by blood" or native Cherokees**.[11]

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[8] The complete title caption is *In Re: Effect of Cherokee Nation v. Nash, and Van v. Zinke, District Court for the District of Columbia, Case No. 13-01313, (TFH) and Petition for Writ of Mandamus requiring the Cherokee Nation Registrar to Begin Processing Citizenship Applications,* No. SC-17-07, 2021 WL 2011566 (Cherokee Sup. Ct. Feb. 22, 2021). A copy of this opinion is attached hereto as **Exhi**bit **I**.

[9] Treaty with the Cherokee, 1866, U.S.-Cherokee Nation of Indians, July 19, 1866, hereinafter "1866 Treaty."

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

[11] *Cherokee Nation v. Nash*, 267 F. Supp. 3d 86, 127 (D.D.C. 2017). In *Nash*, the Court held that while the Cherokee Nation maintains a sovereign right to determine its membership, it must do so equally with respect to native Cherokees and the descendants of Freedmen per Article 9 of the 1866 Treaty with the Cherokee because "neither has rights either superior or, importantly, inferior to the other." *Id*. at 140. Thus, **any rights of citizenship for native Cherokees must be extended to Cherokee Freedmen.** *Id*. (emphasis added).

In Re: Effect of Cherokee Nation v. Nash, p. 3 (attached as **Exhibit I** hereto) (emphasis added).

In 1887 the United States enacted the Dawes Act, also known as the "General Allotment Act" of Feb. 8, 1887.[12] In 1893, the United States established the Dawes Commission, which by order of Congress in 1896 began creating authoritative membership rolls for all Native American tribes in Indian Territory, including the Cherokee Nation.[13] It authorized the President of the United States to subdivide Native American tribal communal landholdings into allotments for Native American heads of families and individuals. See Compl. ¶ 14. In 1898, the United States enacted the Curtis Act, ch 517, 30 Stat. 495 (June 28, 1898),[14] which allotted the land of the Five Civilized Tribes. The Curtis Act was an amendment to the Dawes Act and resulted in the break-up of tribal governments and communal lands in Indian Territory (now Oklahoma) of the Five Civilized Tribes of Indian Territory. These tribes had been previously exempt from the Dawes Act because of the terms of their treaties. *See id*.[15]

On May 27, 1908, the United States enacted the law that is at the center of this case, Five Civilized Tribes, Act of May 27, 1908, 35 Stat. 312 ("**Act**" or "**1908 Act**"). Section 6 of the 1908 Act states in part:

> That the persons and property of minor allottees of the Five Civilized Tribes shall, except as otherwise specifically provided by law, be subject to the jurisdiction of the probate courts of the State of Oklahoma. The Secretary of the Interior is hereby empowered, under rules and regulations to be prescribed by him, to appoint such local representatives within the State of Oklahoma who shall be citizens of that State or now domiciled therein as he may deem necessary to inquire into and investigate the conduct of guardians or curators having in charge the estates of such minors, and whenever such representative or representatives of the Secretary of the Interior shall be of opinion that the estate of any

[12] 24 Stat. 388, ch. 119, 25 U.S.C. 331.

[13] *See Whitmire v. The Cherokee Nation*, Decree of February 3, 1896 (Ct. Cl.), *Cherokee Nation & United States v. Whitmire*, 223 U.S. 108, 115-16 (1912) ("*Whitmire III*").

[14] The official name of the Curtis Act is "Indians in Indian Territory."

[15] *See also* Wright, Muriel H. *A Guide to the Indian Tribes of Oklahoma*. Norman, OK: University of Oklahoma Press. 1968.

> minor is not being properly cared for by the guardian or curator, or that the same is in any manner being dissipated or wasted or being permitted to deteriorate in value by reason of the negligence or carelessness or incompetency of the guardian or curator, said representative or representatives of the Secretary of the Interior shall have power and it **shall be their duty to report said matter in full** to the proper probate court and take the necessary steps to have such matter fully investigated, and go to the further extent of prosecuting any necessary remedy, either civil or criminal, or both, to preserve the property and protect the interests of said minor allottees; and it shall be the further duty of such representative or representatives to make full and complete reports to the Secretary of the Interior. All such reports, either to the Secretary of the Interior or to the proper probate court, shall become public records and subject to the inspection and examination of the public, and the necessary court fees shall be allowed against the estates of said minors. The probate courts may, in their discretion, appoint any such representative of the Secretary of the Interior as guardian or curator for such minors, without fee or charge.

Five Civilized Tribes, Act of May 27, 1908, 35 Stat. 312, sec. 6 (emphasis added).

Plaintiffs Leatrice Tanner-Brown and Harvest Institute Freedman Federation, LLC ("Harvest") are representatives of the putative class of minor Freedmen who by reason of their interests in restricted allotments under the Dawes Act of 1887, the Curtis Act of 1898, the ante-bellum Indian Treaties of 1866, lost or mismanaged trust property and the 1908 Act, clearly have standing to sue the United States for breaches of trust related to allotted lands and lease and royalty payments from restricted land. Compl. ¶¶ 1, 8, 9, 12, 13.

The grandfather of Plaintiff Tanner-Brown, George Curls, was enrolled on the Dawes Roll of the Cherokee Freedmen, pursuant to the Dawes Act on July 1, 1902. At the time of his enrollment, George Curls was five years old, having been born to former Cherokee slave parents in Indian Country, Oklahoma in 1897. See Compl. ¶ 8. Mr. Curls received forty-acre and twenty-acre allotment deeds from the Cherokee Tribe under the Curtis Act on December 5, 1910. Under these two deeds, Mr. Curls received Curtis Act allotments equaling 60 acres. These allotments were received when Mr. Curls was a minor, thirteen years old. *Id*. *See*, **Exhibit J**, for Certified

Copy of "Allotment Deed" and a Certified Copy of the twenty acre "Homestead Deed," also received by Mr. Curls.

Under the 1908 Act, restrictions against alienation of Freedmen allotments or royalties received therefrom, were retained for minors, such as Mr. Curls and his siblings. Under the Act any royalties from allotments owned by minor Freedmen were to be controlled by the Department of Interior. Any royalties derived from leases on Mr. Curls' allotments should have been placed in trust by the Department of Interior under the terms of Sections 2 and 6 of the Act of 1908. **Instead, the Interior Department has shared no records of these royalties,** despite evidence that minor Curls' land was leased for oil and gas drilling. Compl. ¶¶ 8. The Interior Department failed to take any measures whatsoever, as required by Congress under the 1908 Act, to protect the allotment interests of Freedmen minors such as George Curls. *Id*. at ¶ 4. It is this conduct, among other acts of misfeasance and nonfeasance, which is the basis for Plaintiffs' present accounting action. *Id.* at ¶¶ 4, 5, 23, 24.

Plaintiffs' claim in this action arises from multiple federal statutes, as well as from federal common law that has protected common law land rights since the founding of the United States. For the many reasons addressed above and further discussed below, federal question jurisdiction exists over Plaintiffs' claim. Plaintiffs have standing to bring this action; the statute of limitation does not bar it; and the Complaint states a viable cause of action for an accounting. Defendants' Motion to Dismiss advances erroneous and blatantly discriminatory claims and should be denied in its entirety.

III. STANDARD OF REVIEW

Defendants have moved to dismiss Plaintiffs' claims pursuant to Federal Rule of Civil Procedure 12(b)(1) (lack of subject matter jurisdiction) and 12(b)(6) (failure to state a claim). The legal standards for such a motion are as follows.

Where, as here, a defendant merely mounts a facial challenge to subject matter jurisdiction, "the court must accept as true the allegations in the complaint and consider the factual allegations of the complaint in the light most favorable to the non-moving party." *Short v. Chertoff*, 526 F. Supp. 2d 37, 41 (D.D.C. 2007) (citing *Erby v. United States*, 424 F. Supp. 2d 180, 181 (D.D.C. 2006)). The court may, however, "look beyond the allegations contained in the complaint to decide a facial challenge, 'as long as it still accepts the factual allegations in the complaint as true.'" *Id.* at 41 (quoting *Jerome Stevens Pharm., Inc. v. FDA*, 402 F.3d 1249, 1253-54 (D.C. Cir. 2005)).

With respect to a motion to dismiss for failure to state a claim, the Federal Rules of Civil Procedure merely require that a complaint "contain a short and plain statement of the claim showing that the pleader is entitled to relief, in order to give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." *Clark v. Feder Semo & Bard, P.C.*, Civ. A. No. 07-0470 (JDB), 2007 U.S. Dist. LEXIS 91958, at *5 (D.D.C. Dec. 17, 2007) (citing *Bell Atl. Corp. v. Twombly*, 127 S. Ct. 1955, 1964 (2007) (internal quotations omitted)). As such, in order to survive a motion to dismiss under Rule 12(b)(6), the factual allegations must merely "be enough to raise a right to relief above the speculative level, . . . on the assumption that all the allegations in the complaint are true . . . ." *Twombly*, 127 S. Ct. at 1965 (internal citations and quotations omitted).

Accordingly, in evaluating a motion to dismiss for failure to state a claim, "the court must

construe the complaint in a light most favorable to the plaintiff and must accept as true all reasonable factual inferences drawn from well-pleaded factual allegations." *Am. Historical Ass'n v. Nat'l Archives & Records Admin.*, 516 F. Supp. 2d 90, 101 (D.D.C. 2007) (*citing* In re United Mine Workers of Am. Employee Benefit Plans Litig., 854 F. Supp. 914, 915 (D.D.C. 1994)). "[A] well-pleaded complaint may [therefore] proceed even if it strikes a savvy judge that actual proof of those facts is impossible, and that a recovery is very remote and unlikely." *Clark*, 2007 U.S. Dist. LEXIS 91958, at *6 (internal citation and quotations omitted).

IV. ARGUMENT AND AUTHORITY

A. PLAINTIFFS HAVE STANDING

The Plaintiffs have demonstrated standing to sue by (1) alleging their members and decedents, *including George Curls personally* suffered injury-in-fact due to the putative action (or inaction) of the defendants; (2) demonstrating a causal link between the injury and the actions of the defendant; and (3) presenting an injury redressable by favorable judicial action (Compl. ¶¶ 8, 9, 17, 24, 25, 29, 33). *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992); *accord Nat'l Recycling Coal. v. Browner*, 984 F.2d 1243, 1248 (D.C. Cir. 1993).

Defendants predictably attempt to muddy the water by devoting a substantial portion of their standing argument to Plaintiffs' status and standing-related allegations in *prior lawsuits*. *E.g.*, Defs. Memo,[16] at 9-12. **However, that was then, and this is now**. The Complaint in the present action alleges that on November 12, 2020, Plaintiff Tanner-Brown qualified as the legal and duly appointed Personal Representative of the estate of George Curls who, as a Freedmen minor, received two Indian land allotments (described above); and the provisions of the 1908 Act apply

[16] "Defendants' Memorandum Of Points And Authorities In Support Of Motion To Dismiss," ECF 15.

to those allotments. Compl. ¶¶ 8, 14, 22, 23, 30, ECF 1-1. The Defendants' challenge to standing must thus fail, because Freedmen minors including George Curls suffered, and the Curls' estate and similar ones continue to suffer, an injury by Defendants that this Court now has the authority and obligation to redress. *Id*. at ¶ 24, 29. As further discussed below, Plaintiffs therefore have a right to bring this action.

Defendants nevertheless suggest that Plaintiffs' Complaint does not allege an injury in fact that is traceable to the Secretary. Defs. Memo at 19-21. Defendants also claim that for the "first element of the Article III standing analysis, Plaintiffs must allege, specifically, that there were oil, gas, or agricultural leases on Plaintiffs' allotment(s) when they were minors and that a 'particular lease' was mismanaged by Plaintiffs' guardian[s] or other stakeholders." *Id.* at 18. These suggestions are utter nonsense because in making them Defendants turn the motion to dismiss standard on its head and also ignore evidence that was previously provided. The Complaint allegations clearly allege, *inter alia*, that Mr. Curls *received land allotments which were leased, and he suffered injury in fact caused by the Defendants' nonfeasance and failures when "substantial" funds derived therefrom were not accounted for by Defendants*, including in the following excerpts:

> Plaintiff, Leatrice Tanner-Brown is the personal representative of the Estate of George W. Curls, Sr., a Freedman who by reason of his interest in restricted allotments under the Curtis Act of 1898, the ante-bellum Treaties of 1866, lost or mismanaged trust funds, has standing to sue the United States for breaches of trust related to losses and mismanagement of trust funds derived from his allotted land. See, Exhibit A [to the Complaint] for appointment [of Ms. Tanner-Brown as personal representative of Curls' probate estate]. George Curls, was enrolled on the Rolls of the Cherokee Freedmen under the Dawes Act of July 1, 1902. Cherokee Freedmen Roll, Cherokee Freedman 4304. At the time of his enrollment, George Curls was five years old, having been born to former Cherokee slave parents in Indian Country, Oklahoma in 1897.
>
> Mr. Curls received forty and twenty acre allotment deeds from the Cherokee Tribe under the Curtis Act. Under these two deeds, Mr. Curls received Curtis Act allotments

> equaling 60 acres. These allotments were received at a point in time when Mr. Curls was a minor.
>
> *** Under the Act of 1908 any funds from allotments owned by minor Freedmen were to be controlled and monitored by the Department of Interior. See, Sections 2 and 6 of Act of May 27, 1908. **The funds derived from oil, gas, agricultural, hay and pasture leases *on Mr. Curls' allotments were subject to the fiduciary duties imposed by the Act of May 27, 1908, on the Secretary of the Department of Interior*. The Interior Department has no records of these royalties, *despite Mr. Curls' land being leased for oil and gas drilling, and agricultural purposes and having generated substantial revenue***. Leases were entered into with the Willard Oil Company, the Prairie Oil Company and the Minnesota Mining Company as the allotted land was located within what was known as the "Cherokee Oil and Gas Belt."

Compl. ¶ 8 (emphasis added).

> [From] July 1, 1898 through the present *** Defendants had a duty under the Act to monitor funds derived from allotments held by Freedmen minors.

Compl. ¶¶ 18 (e), 21.

> [A]ny funds derived from Mr. Curls' allotments should have been accounted for by the Department of Interior under the terms of the Sections 2 and 6 of the 1908 Act. Instead, the Interior Department has no record of these funds. **These failures were not innocent**. They were the result of a deliberate strategy to swindle land and money from Freedmen.

Compl. ¶ 23 (emphasis added).

> This action seeks to redress injury to George Curls caused by the Secretary of the Interior's nonfeasance. **George Curls was injured by the failure of the Secretary of the Interior to protect him from exploitation of his allotment by his guardians and the Courts of Oklahoma**. The Cherokee Supreme Court has recently stated [in *In Re: Effect of Cherokee Nation v. Nash*] that the Freedmen allotments were entitled to the same paternalistic treatment accorded by the Secretary to Blood Cherokees. The Court stated: "Unequivocally, Freedmen have rights equal to 'by blood' or native Cherokees. Freedmen are men, women, and persons whose 'right to citizenship does not exist solely under the Cherokee Nation Constitution and therefore, [their right to citizenship] cannot be extinguished solely by amending the Constitution' to exclude them. Likewise, their right of citizenship cannot be enlarged by its inclusion in the Cherokee Nation Constitution. Freedmen rights are inherent. They extend to descendants of Freedmen as a birthright springing from their ancestors' oppression and displacement as people of color recorded and memorialized in Article 9 of the 1866 Treaty." This action seeks to vindicate the right to an accounting already accorded to so-called Blood Cherokees, to which Plaintiff Curls is also entitled.

Compl. ¶ 24 (emphasis added) (some format changes).

> In the case of Mr. Curls, he was a resident of Chelsea, Oklahoma, in Rogers County. His allotment[s], granted while he was a minor, were located in distant Nowata County in the midst of oil rich Cherokee Country.

Compl. ¶ 26.

> Mr. Curls allotment was located squarely within an area **known to contain oil**. **The failure of the Department to properly account for and monitor funds owed to George Curls' is the injury Plaintiffs seek to redress, *initially* through an accounting**.
>
> Under the terms Sec. 6 of the Act of 1908, **funds from the allotments held by George Curls were under the ultimate supervision of the Secretary of Department of Interior until Curls reached the age of majority**. Accordingly, all funds generated from Curls' land were restricted and should now be accounted for by the Secretary. . . ..

Compl. ¶¶ 29, 30 (emphasis added).

> The trustee's breach of its accounting duty has unquestionably harmed individual plaintiffs . . ..

Compl. ¶ 33.

> **The United States has never accepted or discharged its fiduciary responsibility unless it was in relation to so-called Blood Indians**. **The United States continues to try to explain away and circumvent its duty owed to George Curls** and similarly situated Freedmen representatives. The blatant racism of the past is being supplanted by intellectual dishonesty and racism today. This lawsuit is to demand that Freedmen finally receive the same economic treatment from the United States as Blood Indians

Compl. ¶ 35 (emphasis added).

Accordingly, Plaintiff has suffered and is suffering concrete and particularized injuries by having been deprived of his property, funds and any accounting. This is more than sufficient to establish individual standing for this Plaintiff. *See, e.g., Baker v. Carr*, 369 U.S. 186, 206 (1962); *Hancock Cty. Bd. of Sup'rs v. Ruhr*, 487 F. App'x 189, 196 (5th Cir. 2012). .

Moreover, in arguing Plaintiff has not alleged injury-in-fact **Defendants forget there were more than oil and gas leases in Freedmen Cherokee territory on the allotments**. There were

also agricultural leases for hay, as well leases for timber, rail and other commodities. While Plaintiffs have not yet found executed leases for George Curls, they have found leases for his siblings who were both older and younger than George. See **Exhibit F** attached hereto. These leases are simply the result of research Plaintiffs have conducted to date, but it is the *Fiduciary* who should have the records and documents concerning what uses were made of the minor Freedmen's allotments. Significantly, George Curls received his allotments at the same time and in the same area as his older and younger siblings. There is thus very strong reason to believe that records of leases for George Curls also exist but we just have not found them yet. **There is no rational reason why the minor Curls' guardian would lease land all around George's allotments but not his**. If the land was not leased however, unless it can be shown that unlike the surrounding property George Curls' land had no value, then there was a fiduciary duty to lease it. In either case this element of standing is also satisfied.

Yet this is the far-fetched proposition on which Defendants' "no injury in fact" standing argument hinges. Based on their arguments against standing, Defendants clearly hope that the Court will ignore the motion to dismiss standard, Plaintiffs' allegations, and Defendants' continuing betrayal of these minor Freedmen. Records of all of the leases should be available to the fiduciary Department of Interior. Plaintiffs implore this Honorable Court not to use the fiduciary's failure to monitor and maintain records concerning Freedman minor allotments, which is a part of the duty breached by the fiduciary, against them.

To meet constitutional standing requirements, a plaintiff must show (1) that he or she has suffered an injury-in-fact due to the actions of the defendant, (2) that there is a causal link between the injury and the actions of the defendant, and (3) that the injury can be redressed by favorable judicial action. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992); *Nat'l Recycling Coal.*

v. Browner, 984 F.2d 1243, 1248 (D.C. Cir. 1993). Plaintiffs meet all three requirements. As detailed above, and further in the Complaint, Plaintiffs allege that George Curls was among the minor Freedmen who were injured by the failure and nonfeasance of Defendants; that Defendants had an explicit fiduciary duty to protect him (and other minor Freedmen) from waste and exploitation of land allotments under the 1908 Act; and Defendants breached that duty completely. *E.g.*, Compl. ¶¶ 8, 23, 24, 26, 29, 30, 33, 35. Furthermore, the Complaint alleges that a "fiduciary's duties of loyalty and prudence also entail a duty to conduct an independent investigation into, and continually to monitor the assets of his charge. From [July 1, 1898 through the present], defendants breached this duty of investigation and monitoring with respect to Freedmen. During [that] Period, none of the defendants or their predecessors made any attempt to effectively monitor or respond to mistreatment and exploitation of Freedmen minor allotments." Compl. ¶¶ 18(e), 31.

However, at one point Defendants also appear to suggest the 1908 Act does not apply to Plaintiffs, and resort to arguing: "Plaintiffs still have not alleged that George Curls' purported injury was caused by 'negligence or carelessness or incompetency of the guardian or curator' so as to trigger any of the largely discretionary protective options at the Secretary's disposal under the 1908 Act and, under Plaintiffs' theory, the supposed duty to provide an accounting." Defs. Memo at 19. Defendants are just wrong, and their arguments are offensive to the Freedmen. Section 6 of the 1908 Act provides as follows:

> . . . whenever such representative or representatives [appointed by] the Secretary of the Interior shall be of opinion that the estate of any minor is not being properly cared ***for*** by the guardian or curator, or that the same is in any manner being dissipated or wasted or being permitted to deteriorate in value by reason of the negligence or carelessness or incompetency of the guardian or curator**,** . . . it shall be their duty to report said matter in full to the proper probate court and take the necessary steps to have such matter fully investigated, and go to the further extent of prosecuting any necessary remedy, either civil

> or criminal, or both, to preserve the property and protect the interests of said minor allottees; **and it shall be the further duty of such representative or representatives to make full and complete reports to the Secretary of the Interior**. All such reports, either to the Secretary of the Interior or to the proper probate court, shall become public records and subject to the inspection and examination of the public, and the necessary court fees shall be allowed against the estates of said minors . (emphasis added).

Despite the foregoing underscored language, according to Defendants the Complaint must specifically allege "negligence or carelessness or incompetency of the guardian or curator" to trigger the "largely discretionary protective options" of the 1908 Act. Not so (although clearly the guardians were incompetent for not providing accountings). Defendants' argument is wrong because it is contrary to the plain language and the intent of the 1908 Act, which by its explicit terms states "it shall be the ***further*** **duty** of such representative or representatives to make **full and complete reports to the Secretary of the Interior.**" (emphasis added). The phrase "it shall be the further duty. . .to make full and complete reports to the Secretary of Interior," if it is to have any meaning whatsoever, must mean that there are to be full and complete accountings to the Secretary regardless of the nature of the breach of fiduciary duty.

Defendants have also resorted to arguing that despite the 1908 Act's Section 6 mandate, perhaps the Interior representative was never appointed, and thus (by reason of such malfeasance) the United States is relieved of all reporting liability. See Defs. Memo at 30-31. This hear-no-evil-see-no-evil defense is soundly refuted by proof that **in fact such representatives were appointed for the Freedmen minors**. See **Exhibit F** attached hereto (marked as ECF Doc. 16-6, page 9 of 20 in D.D.C. Case No. 1:14-cv-01065-RC**)** (Interior Department filing dated July 23, 1907 from "**Acting United States Indian Agent"** to attorney for Rathbun Alden (guardian of all minor Curls children), that notice of sales of leases two of the Curls minors has been "posted in this office in a conspicuous place where it will remain until after the sale on the first date of August, 1907")

(emphasis added). Critically, this Notice confirms that the United States assigned oversight of the minor Freedmen guardianships to the "Department of Interior, **United States Indian Service**." *Id.* (emphasis added).

Furthermore, the Complaint in any event alleges more than mere "negligence or carelessness or incompetency," as it charges Defendants with abdicating their statutory monitoring duty altogether with respect to George Curls and other minor Freedmen! See Compl. ¶ 23 ("none of the defendants . . .made any attempt to effectively monitor or respond to mistreatment and exploitation of Freedmen minor allotments"); Compl. ¶ 35 ("The United States has **never** accepted or discharged its fiduciary responsibility unless it was in relation to so-called Blood Indians. . . .The blatant racism of the past is being supplanted by intellectual dishonesty and racism today.") (emphasis added).

Defendants also argue that the Freedmen "have failed to make sufficient factual allegations to demonstrate that they have standing to pursue this claim," Defs. Mem. at 35, but at the pleading stage, "general factual allegations of injury resulting from the defendant's conduct may suffice." *Sierra Club v. EPA*, 292 F.3d 895, 898-899 (D.C. Cir. 2002) (quoting *Lujan*, 504 U.S. at 561). Here, the Freedmen have clearly alleged sufficient facts to demonstrate that they have suffered an injury that is ongoing and fairly traceable to Defendants' actions. *E.g.*, Compl. ¶¶ 24, 29-31.

Further, in order to demonstrate standing, Plaintiffs "need not prove a cause-and effect relationship with absolute certainty; substantial likelihood of the alleged causality meets the test. This is true even where the injury hinges on the reactions of third parties . . . to the agency's conduct." *Competitive Enter. Inst. v. Nat'l Highway Traffic Safety Admin.*, 901 F.2d 107, 113 (D.C. Cir. 1990) ("The standing determination must not be confused with our assessment of

whether the party could succeed on the merits.") (citation omitted*); Public Citizen v. Federal Trade Comm'n*, 869 F.2d 1541, 1549 (D.C. Cir. 1989).

Defendants nevertheless contend that Harvest has not met the requirements for *associational* standing. Def. Motion at 32-34. Plaintiff Leatrice Tanner-Brown and other representatives of former Freedmen minors all have a direct personal stake in receipt of an accounting for breach of fiduciary duties owed to them by Defendants. Compl. ¶ 9. The vindication of the rights and interests of these Freedmen is the very reason for creation and the existence of Harvest. Harvest brings suit on behalf of these Freedmen who, like Ms. Tanner-Brown, have a right to participate in this litigation but prefer to be represented by Harvest. Plaintiff Tanner-Brown is a member of the Harvest Institute Freedmen Federation. *Id*. Harvest thus also meets the requirements for associational standing because (a) its members (**like Ms. Tanner-Brown**) would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are obviously germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit. *Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 343 (1977). Rejecting standing for Harvest would contravene this as well as later precedence. *See id*.

As for the last requirement, Defendants' attempt to inject their take on the "no participation" requirement into this third prong of associational standing under *Hunt* must likewise fail. Defendants contend Plaintiffs do not allege "why neither 'the claims pursued nor the relief sought require the individual participation of [Harvest]'s members." Defs. Memo at 24 (citing *Ctr. for Sustainable Econ. v. Jewell*, 779 F.3d 588, 597 (D.C. Cir. 2015)). Once again, Defendants overlook the obvious. The reason Harvest does not need individual member participation is because a fiduciary's breach occurs when upon demand for an accounting the fiduciary fails or

refuses to provide it. Plaintiffs demand an accounting of the proceeds received / managed by guardians appointed over Freedmen minors whose allotments were leased. **The conduct of the fiduciary in failing to provide that accounting is *common* to all Freedmen minors who were subject to Section 6 of the 1908 Act. Although depending on the accounting produced we may need subclasses, there is no reasonable basis for denying Harvest standing when it has the same claim and interest in the accounting as those minors, their legal representatives, and its own members.**

The Supreme Court has also said that the prudential third precondition in *Hunt* "is best seen as focusing on … matters of administrative convenience and efficiency..." *United Food & Commercial Workers Union Local 751 v. Brown Group, Inc*., 517 U.S. 544, 557 (1996). Critically, the organizational plaintiff here does not request relief of an individualized nature, but instead an accounting with respect to all former Freedmen minors covered by the 1908 Act. To deny Harvest standing because of the alleged need for direct participation of all those individuals and their representatives would clearly undermine the focus chosen by the Supreme Court. *See id.*

Furthermore, only one named plaintiff need demonstrate standing. *Korte v. Sebelius*, 735 F.3d 654, 667, n.8 (7th Cir. 2013). Thus, on this basis alone, as discussed above Plaintiffs have satisfied the standing requirement by establishing Ms. Tanner-Brown's standing. **"Where, as here, at least one plaintiff has standing, jurisdiction is secure**," and the Court thus need not address whether Harvest has standing to bring suit on behalf of its members. *Kachalsky v. Cty. of Westchester*, 701 F.3d 81, 101 n.2 (2d Cir. 2012) (emphasis added); *Lujan v. Defenders of Wildlife*, 504 U.S. 563 (stating that a single member with standing in his or her own right is sufficient to establish that an organization has standing); *Hispanic Nat'l Law Enf't Ass'n NCR v. Prince*

George's Cty., Civil Action No. TDC-18-3821, 2019 U.S. Dist. LEXIS 112977, at *13-14 (D. Md. July 8, 2019).

To the extent the Court does reach the issue of Harvest's standing, however, the Supreme Court's three-part association standing test has also been satisfied. *See Hunt v. Washington State Apple Advert. Comm'n*, 432 U.S. at 343. Rejecting standing for Harvest would contravene this as well as later precedence. *See id*. Finally, Defendants also fail to recognize that the Privileges and Immunities Clause permits an association to seek relief on behalf of its members who are persons, which is precisely what Plaintiff Harvest is doing. *See id.* Harvest members are individual, natural persons and therefore have a direct interest and standing to challenge the governments' inaction against the Freedmen.

B. PLAINTIFFS' CLAIMS ARE NOT BARRED BY A STATUTE OF LIMITATIONS

As a preliminary matter, the case law in this Circuit shows a strong disfavor of making determinations on statute of limitations issues at the motion to dismiss stage. *See Firestone v. Firestone*, 76 F.3d 1205, 1210 (D.C. Cir. 1996) (holding that the district court erred by dismissing a case with prejudice on a motion to dismiss rather than summary judgment); *Richards v. Mileski*, 662 F.2d 65, 73 (D.C. Cir. 1981) ("There is an inherent problem in using a motion to dismiss for purposes of raising a statute of limitations defense. Although it is true that a complaint sometimes discloses such defects on its face, it is more likely that the plaintiff can raise factual setoffs to such an affirmative defense."); *Jones v. Rogers Mem'l Hosp.*, 143 U.S. App. D.C. 51, 442 F.2d 773, 775 n. 2 (1971) ("The issue of when plaintiffs decedent discovered the injury, or through the exercise of reasonable diligence should have known of the facts giving rise to the claim, is properly one for the trier of fact, save for the exceptional case when it can be established that there is no material issue of fact.").

Also, even though the Court may properly judge a motion to dismiss for lack of jurisdiction that raises the limitation under a summary judgment standard, *see In re Swine Flu Immunization prods. Liability Litigation*, 880 F.2d 1439, 1441-43 (D.C. Cir. 1989), to do so would be premature at this point because this case is in its infancy. Discovery has not been conducted and to decide whether genuine issues of material fact exist at this point would clearly be imprudent.

Additionally, and in the alternative, Defendants have not established as a matter of law that this action is barred by any statute of limitations. They rely on 28 U.S.C. § 2401(a), a statute of limitations which ostensibly bars claims that accrued more than six years before filing. However, **Defendants point to nothing in the Complaint, or elsewhere, establishing when minor Freedmen allottees received the requisite accounting under § 2401(a)**.[17] Defendants instead merely contend (Defs. Memo at 25-27) that it was Plaintiffs' obligation to file this action within six years after April 4, 2007 because "Plaintiffs knew that the Federal Defendants disavowed any alleged trust duty towards Freedmen minors in their motion to dismiss Plaintiffs' case in *HIFF v. United States*, 80 Fed. Cl. 197 (2008) ("*HIFF I*"), *aff'd*, 324 F. App'x 923 (Fed. Cir. 2009), *cert. denied*, 558 U.S. 1149 (2010)." There are multiple of other reasons why Defendants reliance on *HIFF I* and the statute of limitation is sorely misplaced, and each one requires rejection of Defendants' statute of limitation defense:

First, *HIFF I* **involved a different statute of limitation, namely 28 U.S.C. § 2501**, which is applicable to cases within the jurisdiction of the Federal Court of Claims. Defendants do not contend that § 2501 applies to the present case, and they raise only 28 U.S.C. § 2401(a) in their Motion. Defs. Memo at 25-27.

[17] As discussed *ante*, Defendants' repudiation defense is also clearly inapplicable, untimely, or both.

Second, Defendants have also not raised *res judicata* or claim preclusion as grounds for dismissal in their Motion, as would be necessary if either defense were to serve as a basis for invoking prior rulings. *Cf.* Defs. Memo at 1-34. *See United States v. Harmon*, 474 F. Supp. 3d 76, 109 (D.D.C. 2020) (where defendant made no argument related to defense, he conceded that it should be denied with respect to that issue); *Round Valley Indian Tribes v. United States*, 97 Fed. Cl. 500 (2011) (claims against government for mismanagement of Indian trust funds were not barred by claim preclusion or release since prior action on behalf of all tribes for taking property did not involve same transactional facts, and statute of limitations did not apply since claims did not accrue until government provided trust accounting).

Third and fourth, Plaintiff Tanner-Brown was not appointed personal representative of George Curl's estate until November 12, 2020, ***and*** neither Plaintiff had an obligation to anticipate a prior § 2401(a) limitations argument. **A plaintiff need not plead defenses**. *Anderson Living Tr. v. WPX Energy Prod., LLC*, No. CIV 12-0040 JB/WPL, 2015 U.S. Dist. LEXIS 72870, at *61 (D.N.M. May 26, 2015) ("when a defendant seeks dismissal based on the statute of limitations, the time-bar must be apparent on the face of the complaint") (internal quotations and citations omitted).

Fifth, and even more critically, a limitations period **has never been triggered** because multiple statutory provisions suspended when the minor Freedmen claims accrued so as to preclude the application of the statute of limitations to bar their claims. *See Shoshone Indian Tribe v. United States*, 364 F.3d 1339, 1346-47 (Fed. Cir. 2004) (explaining that "[s]tatutes that toll the statute of limitations, resurrect an untimely claim, defer the accrual of a cause of action, or otherwise affect the time during which a claimant may sue the Government also are considered a

waiver of sovereign immunity") (emphasis added). Specifically, in a series of provisions enacted as part of the Department of the Interior's annual appropriations,[18] Congress provided:

> [N]otwithstanding any other provision of law, **the statute of limitations shall not commence to run on any claim**, including any claim in litigation pending on the date of the enactment of this Act, **concerning losses to or mismanagement of trust funds**, until the affected Indian tribe or individual Indian has been furnished with an accounting of such funds **from which the beneficiary can determine whether there has been a loss**[.]

Consolidated Appropriations Act, 2014, Pub. L. No. 113-76, 128 Stat 5 (Jan. 17, 2014) (emphasis added).[19] Reviewing the "the plain language of the [Appropriations] Act," the Federal Circuit

[18] These statutory provisions are also referred to as the Indian Trust Accounting Statute or "ITAS," as they are occasionally referred to in this memorandum. *See Simmons v. United States*, 71 Fed. Cl. 188, 193 (2006).

[19] Congress enacted this (or nearly identical) language in 1993-1994, 1996-2001, 2003-2005, 2007, 2009, and 2011. Department of the Interior and Related Agencies Appropriations Act, 1994, Pub. L. No. 103-138, 107 Stat. 1379 (Nov. 11, 1993); Department of the Interior and Related Agencies Appropriations Act, 1995, Pub. L. No. 103-332, 108 Stat. 2499 (Sept. 30, 1994); Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321 (Apr. 26, 1996); Omnibus Consolidated Appropriations Act, 1997, Pub. L. No. 104-208, 110 Stat. 3009 (Sept. 30, 1996); Department of the Interior and Related Agencies Appropriations Act, 1998, Pub. L. No. 105-83, 111 Stat. 1543 (Nov. 14, 1997); Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. No. 105-277, 112 Stat. 2681 (Oct. 21, 1998); Consolidated Appropriations Act, 2000, Pub. L. No. 106-113, 113 Stat. 1501 (Nov. 29, 1999); Department of the Interior and Related Agencies Appropriations Act, 2001, Pub. L. No. 106-291, 114 Stat. 922 (Oct. 11, 2000); Consolidated Appropriations Resolution, 2003, Pub. L. No. 108-7, 117 Stat. 11, 236 (Feb. 20, 2003); Department of the Interior and Related Agencies Appropriations Act, 2004, Pub. L. No. 108-108, 117 Stat. 1241, 1263 (Nov. 10, 2003); Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, 118 Stat. 2809, 3060-61 (Dec. 8, 2004); Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006, Pub. L. No. 109-54, 119 Stat. 499, 519 (Aug. 2, 2005); Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, 121 Stat. 1844, 2115 (Dec. 26, 2007); Omnibus Appropriations Act, 2009, Pub. L. No. 111-8, 123 Stat. 524, 718-19 (Mar. 11, 2009); Department of the Interior—Appropriation, 2010, Pub. L. No. 111-88, 123 Stat. 2904, 2922 (Oct. 30, 2009); Consolidated Appropriations Act, 2012, Pub. L. No. 112-74, 125 Stat. 786 (Dec. 23, 2011); *see also Round Valley Indian Tribes v. United States*, 97 Fed. Cl. 500, 506 n.6 (2011). Previous versions of this provision omitted the phrase "including any claim in litigation pending on the date of the enactment of this Act" and/or the phrase "from which the beneficiary can determine whether there has been a loss." *See* Department of the Interior and Related Agencies Appropriations Act, 1991, Pub. L. No. 101-512, 104 Stat. 1915 (Nov. 5, 1990) ("notwithstanding any other provision of law, the statute of limitations shall not commence to run on any claim concerning losses to or

held that "Congress has expressly waived its sovereign immunity and deferred the accrual of the Tribes' cause of action until an accounting is provided." *Shoshone Indian Tribe*, 364 F.3d at 1346-47 (explaining that "[t]he introductory phrase '[n]otwithstanding any other provision of law' connotes a legislative intent to displace any other provision of law that is contrary to the Act, including 28 U.S.C. § 2501" while "[t]he next important phrase of the Act, 'shall not commence to run,' unambiguously delays the commencement of the limitations period until an accounting has been completed that reveals whether a loss has been suffered") (emphasis added).

In particular, "the [Appropriations] Act provides that claims falling within its ambit shall not accrue, *i.e.*, 'shall not commence to run,' until the claimant is provided with a ***meaningful*** accounting." *Id.* (emphasis added) (commenting "[t]his is simple logic—how can a beneficiary be aware of any claims unless and until an accounting has been rendered?"); *see also Oenga v. United States*, 83 Fed. Cl. 594, 609 (2008) ("For 'claims falling within [the] ambit' of the ITAS, therefore, the statute of limitations does not begin to run—meaning the claims do not accrue—until the plaintiffs receive a ***meaningful*** accounting." (*quoting Shoshone Indian Tribe*, 364 F.3d at 1347) (emphasis added)).

Because Plaintiffs have yet to be furnished with any accounting, the statute of limitation has not yet begun to run to. *Id.* Significantly, in *Shoshone Indian Tribe*, 364 F.3d at 1342, the Federal Circuit also determined the Appropriations Act permitted Plaintiffs to bring "their trust management claims after they receive an accounting--regardless of when such claims accrued[.]"

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mismanagement of trust funds, until the affected tribe or individual Indian has been furnished with the accounting of such funds"). Congress enacted such earlier versions in 1990-1992. *Id.*; Department of the Interior and Related Agencies Appropriations Act, 1992, Pub. L. No. 102-154, 105 Stat. 990 (Nov. 13, 1991); Department of the Interior and Related Agencies Appropriations Act, 1993, Pub. L. No. 102-381, 106 Stat. 1374 (Oct. 5, 1992); *see also Wolfchild v. United States*, 731 F.3d 1280, 1290 (Fed. Cir. 2013) (noting that "[t]he ITAS . . . has been included in appropriations acts since 1990").

(emphasis added). *Id.* at 1346 ("the introductory phrase 'notwithstanding any other provision of law' connotes a legislative intent to displace **any other provision of law that is contrary** to the Act") (emphasis added). *See also Felter v. Kempthorne*, 473 F.3d 1255, 1261 (D.C. Cir. 2007) (Appropriations Act suspension applied to allegation that United States "breached its fiduciary duty by conspiring with the 'full-blood' Ute and non-Indians to transfer to these individuals land and other property that the United States held in trust for plaintiffs as members of the Uinta Band" and that "Interior 'grossly mismanaged' assets held in trust prior to termination" of their status as tribe).

Also strikingly relevant to the present case is the following rational applied in *Chippewa Cree Tribe of the Rocky Boy's Reservation v. United States*, 69 Fed. Cl. 639, 665 (2006):

> Under the Appropriations Acts, trust beneficiaries have a claim for losses caused by mismanagement, nonfeasance or misfeasance on the part of the trustee in violation of statutory duties **until a meaningful accounting is provided. Shoshone**, 364 F.3d at 1347. There is no exception in the Appropriation Acts for cases where, as here, distributions have been made but an accounting has not been presented. **Defendant's attempt to avoid liability by arguing that its duty to trust fund beneficiaries terminated with the distribution of the funds is unavailing**.

(emphasis added).

Sixth, the United States *concedes* that the ITAS "suspended the accrual of the six-year statute of limitations in 28 U.S.C. § 2401(a)." Defs. Memo. at 26, fn.10. Accordingly, it must also be "considered a waiver of [the United States'] sovereign immunity." *Shoshone*, 364 F.3d at 1346. Defendants nevertheless claim that the ITAS does not apply to the present action because it applies "only to claims concerning the management of trust funds, not trust assets, such as restricted allotments and leases thereon." *Id.* Defs. Memo at 26 misstates Plaintiffs' claims and misinterprets the ITAS. Plaintiffs fundamentally disagree that this statute applies only to claims that a "trust

fund" has been mismanaged. Rather, if funds are held in trust – whether in a specifically identified account or not – this is adequate to maintain a cause of action under the ITAS.[20] Moreover the Defendants' statement is simply incorrect. Plaintiffs have sufficiently pled that the **funds**, which continue to be held in trust by the United States, have not been accounted for. See Compl. ¶¶ 29, 30, 33, 35. Furthermore, *the failure to account is itself an issue of trust fund mismanagement*. *See Fletcher v. United States*, 730 F.3d 1206, 1210 (10th Cir. 2013) (allowing individual Indian beneficiaries to "sue for an accounting, just as traditional trust beneficiaries are permitted to do."). And, since Defendants have offered no evidence to the contrary of the allegations in Plaintiffs' Complaint, at a bare minimum, Plaintiffs' allegations are sufficient to withstand a motion to dismiss. *See Alvarado v. KOB-TV, L.L.C.*, 493 F.3d 1210, 1215 at n.2 (10th Cir. 2007).

Seventh, while Defendants attempt to suggest otherwise, the limitation suspension adopted in the ITAS has never been withdrawn or repealed by Congress. *See, e.*g., Appropriations Act, Nov. 10, 2003, Pub. L. No. 108-108, Tit. I, 117 Stat. 1263. Defendants' argument that "[w]ithout additional language expressly providing otherwise," this statute-of-limitation accrual declaration is restricted to a single fiscal year is nonsensical because such application is necessarily forward looking. For the same reason, the case that Defendants cite for their "one-year-and-done" argument, *Bldg. & Constr. Trades Dep't, AFL-CIO v. Martin*, 961 F.2d 269, 273-74 (D.C. Cir. 1992), is clearly off point. Def. Memo. at 26, fn.10. Significantly, neither *Bldg. & Constr. Trades* nor the cases on which it relies involved an express accrual suspension time. In the ITAS Congress explicitly adopted the "accounting" exception that applies to accrual of claims concerning the

[20] And consistent with the Indian Canons of Construction which should apply equally to the Freedmen, the language in the Acts should be construed broadly "when the issue is whether Indian rights are reserved or established…" *Nat'l Labor Relations Bd. v. Pueblo of San Juan*¸ 276 F.3d 1186, 1194 (10th Cir. 2002).

management of trust funds, ***which claim is in fact alleged in this case.*** *E.g.*, Compl, ¶¶ 14, 21, 23. **Thus, only when Defendants provide an accounting will the statute of limitations begin to run on Plaintiffs' claim**. *See Shoshone Indian Tribe v. United States*, 364 F.3d at 1342. *See also Otoe Missouria Tribe of Oklahoma v. Kempthorne*, No. CIV-06-1436-C, 2008 U.S. Dist. LEXIS 99548, at *12, 2008 WL 5205191, *4-5 (W.D. Okla., Dec. 10, 2008) (Congress has expressed an intent to suspend all statutes of limitations until an accounting has been provided in trust mismanagement case); *Tonkawa Tribe of Indians of Okla. v. Kempthorne*, No. CIV-06-1435-F, 2009 U.S. Dist. LEXIS 21484, at *7, 2009 WL 742896, *2 (W.D. Okla. Mar. 17, 2009) (same).

Eighth, even without invoking the provisions of the ITAS, Plaintiffs' claims have not yet accrued because the ITAS merely incorporates the federal common law principle of trust claim-accrual:

> In *Shoshone Indian Tribe*, our appellate court recognized that the nature of the trustee-beneficiary relationship often allows a trustee to mask "repudiation" of a breach without the knowledge of the beneficiary. *Id*. For this reason, in breach of trust cases, it is "**common for the statute of limitations to not commence to run against the beneficiaries until a final accounting has occurred that establishes the deficit of the trust**." *Id*., [364 F.3d at 1348] (citations omitted). . .
>
> Therefore, the court has determined that the Tribes' claims for breach of trust in this case were not waived or released by either of the prior actions, as they did not accrue until [receipt of the reconciliation report]. *See Osage Nation v. United States*, 57 Fed. Cl. 392, 397 (2003).

Round Valley Indian Tribes v. United States, 97 Fed. Cl. 500, 517-18 (2011) (emphasis added); *see also Wolfchild v. United States*, 62 Fed. Cl. 521, 547 (2004) ("Congress chose the phrase 'shall not commence to run' as opposed to 'tolls,' meaning that the beginning of the limitations period is delayed until an accounting is provided. [*Shoshone*] at 1347. Indeed, in this regard, the Indian Trust Accounting Statute [Appropriations Act] **resurrects claims that may previously have been**

barred by the statute of limitations. This interpretation is consistent with principles of trust law, because '**beneficiaries of a trust are permitted to rely on the good faith and expertise of their trustees; because of this reliance, beneficiaries are under a lesser duty to discover malfeasance relating to their trust assets.**' *Id.*") (emphasis added).

In sum, the limitations period has never been triggered at all against Plaintiffs' claim, either upon application of the federal common law or by reason of the Appropriation Acts of Congress. As the Plaintiffs have yet to be furnished with an accounting of their trust funds, the individuals' claims with respect to their allotments have not yet accrued. *See id*; *Felter v. Kempthorne*, 473 F.3d at 1261.

Ninth, Plaintiffs seek prospective *equitable* relief from Defendants for an accounting of trust funds that were to be secured for the Freedmen minors, to which a statute of limitations argument does not fit. *See Holmberg v. Armbrecht*, 327 U.S. 392, 396 (1946) ("[t]raditionally and for good reasons, statutes of limitations are not controlling measures of equitable relief"); *United States v. Telluride Co*., 146 F.3d 1241, 1245 (10th Cir. 1998) (citing *Holmberg*). In *Pelt v. Utah*, 611 F. Supp. 2d 1267, 1281 (D. Utah 2009), the court observed that limitations may not apply to such equitable claims as a breach of trust: "Given the equitable nature of Plaintiffs' claims, it is not clear that the court needs to engage in a statute of limitations analysis because the doctrine of laches typically governs equitable actions instead." In the present case, Plaintiffs allege that Defendants' unlawful refusal to provide an accounting, and breach of their duty to avoid conflicts and to monitor Freedmen allotments continues to this day, with Defendants' attempting to circumvent the duties owed to George Curls and similarly situated Freedmen representatives minors. See Compl. ¶ 35.[21] Even assuming that the claim accrued more than six years ago, which

[21] Paragraph 35 of the Complaint states:

is expressly *denied* due to application of the Appropriations Act, the period for filing was held open by the *continuing violation* as alleged in ¶ 35 of the Complaint. That is, because Defendants continuously violated their fiduciary duties up to the present time, no statute of limitation has yet run. *Sierra Club v. Johnson*, No. C 08-01409 WHA, 2009 U.S. Dist. LEXIS 14819, at *25, 2009 WL 482248, *9 (N.D. Cal. Feb. 25, 2009) ("continuing-violations doctrine serves to bar the application of the statute of limitations defense when a single violation exists that is continuing in nature"); *Institute for Wildlife Protection v. United States Fish and Wildlife Service*, No. 07-CV-358-PK, 2007 U.S. Dist. LEXIS 85197, 2007 WL 4117978, *4-6 (D. Or. Nov. 16, 2007) (failure of an agency to perform its statutory duty also continues the period under § 2401(a)).

Cobell held in 30 F. Supp.2d 24 (D.D.C. 1998), as follows:

> [S]everal courts have recognized and as the plaintiffs allege, allegations of breach of trust against government officials with regard to the administration of Indian trusts arise under the federal common law. *See Oneida Indian Nation v. County of Oneida*, 470 U.S. 226, 233, 84 L. Ed. 2d 169, 105 S. Ct. 1245 (1974) (explaining that federal question jurisdiction existed in an ejectment action brought by Indian plaintiffs based, in part, on federal common law); *Vizenor v. Babbitt*, 927 F. Supp. 1193, 1199 (D. Minn. 1996) (holding that, in a suit against the Secretary and Assistant Secretary of the Interior for breach of trust, the claims arose under federal common law); *White v. Matthews*, 420 F. Supp. 882, 887-88 (D.S.D. 1976) (holding that allegations of breach of trust against the government in a suit brought by Indian plaintiffs invoked federal question jurisdiction under federal common law). Actions arising under federal common law fall within the general federal question jurisdiction conferred by 28 U.S.C. § 1331. *Illinois v. City of Milwaukee*, 406 U.S. 91, 100, 31 L. Ed. 2d 712, 92 S. Ct. 1385 (1972). The Supreme Court has repeatedly upheld the existence of a trust relationship between the government and the Indian people. *See, e.g.*,

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> Defendants breached their duty to avoid conflicts of interests and to monitor Freedmen allotments in favor of alienation to European settlers, Oklahoma statehood, and corporate interests. The United States has never accepted or discharged its fiduciary responsibility unless it was in relation to so-called Blood Indians. The United States continues to try to explain away and circumvent its duty owed to George Curls and similarly situated Freedmen representatives. The blatant racism of the past is being supplanted by intellectual dishonesty and racism today. This lawsuit is to demand that Freedmen finally receive the same economic treatment from the United States as Blood Indians.

> [*United States v. Mitchell, 463 U.S. 206, 225 (1983) ("Mitchell II").* The plaintiffs allege that the government, including the Secretary of the Treasury (to a limited extent) has breached these recognized duties. Therefore, because the plaintiffs' allegations against the Secretary of the Treasury arise under the statutory law and common law of the United States, this Court has "arising under" jurisdiction over the plaintiffs' claim.

Cobell v. Babbitt, 30 F. Supp. 2d 24, 38 (D.D.C. 1998).

Tenth, in support of their statute of limitation argument, *Defendants cite only non-precedential opinions and one decision which supports Plaintiffs* (Defs. Memo at 26-27): *See John R. Sand & Gravel v. United States*, 552 U.S. 130, 132-35 (2008) (Supreme Court re-affirmed a 130-year-old line of cases that deem the limitations period for claims filed in the Court of Federal Claims, 28 U.S.C. § 2501, to implicate subject-matter jurisdiction, but avoided discussion of 28 U.S.C. § 2401(a)); *Felter v. Kempthorne*, 473 F.3d 1255, 1259 (D.C. Cir. 2007) (Appropriations Act suspension applied to allegation that United States "breached its fiduciary duty by conspiring with the 'full-blood' Ute and non-Indians to transfer to these individuals land and other property that the United States held in trust for plaintiffs as members of the Uinta Band"); *Kendall v. Army Bd. for Corr. of Military Records*, 996 F.2d 362, 365 (D.C. Cir. 1993) (involved claim to overturn a court martial and had nothing to do with Indian land allotments or trust claims); *Wolfchild v. United States*, 731 F. 3d 1280 (Fed. Cir. 2013) (court found claim did not fall under the suspension provision as it did not involve trust funds and the funds at issue were openly disbursed in 1981 and 1982 rendering an accounting no unnecessary necessary); *Cobell v. Norton*, 260 F. Supp. 2d 98 (D.D.C. 2013) (on a *motion for summary judgment* court concluded that statute of limitations did not commence running for a beneficiary's equitable claim to enforce obligations of the trustee until the trustee had repudiated the beneficiary's right to the benefits of the trust; none of the case law cited by the Secretary mandated a contrary conclusion; and court found that the Secretary had neither repudiated the existence of the trust nor the individuals' right to enjoy the benefits of the

trust). In sharp contrast to *John R. Sand & Gravel, Kendall, and Wolfchild,* Plaintiffs' Complaint allegations clearly trigger the statute of limitations suspension provisions of the Appropriations Act, and require denial of Defendants' Motion. See Compl. ¶¶ 2, 4, 5, 29, 30, 33, 36-39. Further, unlike in *Cobell,* Defendants have not filed a motion for summary judgment in the present action.

Eleventh, Defendants' "repudiation" argument is inapplicable and inapposite. Defendants contend their motion to dismiss filed on April 4, 2007[22] in *HIFF v. United States*, No. 06-907L, 80 Fed. Cl. 197 (2008) ("*HIFF I*"), constituted a repudiation because Defendants therein disavowed "any alleged trust duty towards Freedmen minors[.]" Defs. Memo at 26. However, *HIFF I* not only involved a different statute of limitation as noted above, but it also alleged different claims and did **NOT** involve the 1908 Act. *Cf.* Defendants' Memorandum In Support Of Motion To Dismiss, in *HIFF I*, No. 06-907L, Doc. 10-1, at 10-16 (Defendants argued no duty arose under the "1866 Treaties with the Creeks, Seminoles, or in the agreement with the Cherokees"). There was not even a reference to the 1908 Act in Defendants' *HIFF I* Memorandum, much less repudiation of a duty under the Act. *Cf. id*.

Finally, Defendants' repudiation argument is also nonsensical. This is so because the first time Defendants' made any attempt to repudiate a fiduciary duty toward Plaintiffs under the 1908 Act was on November 19, 2014 when they filed a motion to dismiss and supporting memorandum in Plaintiffs' prior class action in the District Court for the District of Columbia, *i.e., Leatrice Tanner-Brown, et al. v. Secretary of the Interior, et al*, Civil Action No. 1:14-cv-1065-RC (D.D.C.) (hereinafter, "**first D.D.C. action**"), ECF 13. However, at that time Plaintiffs' 1908 Act litigation was also pending – in the first D.D.C. action -- ***and its pendency thus tolled the running***

[22] The motion to dismiss referenced by Defendants was actually filed on April 5, 2007 (not April 4, 2007), as Doc. No. 10-1.

of the statute of limitation until dismissal of the first D.D.C. action on January 27, 2016. *See id.* (Complaint, ECF 1, filed 6/25/2014); *American Pipe & Construction Co. v. Utah*, 414 U.S. 538, 553 (1974). In *American Pipe*, 414 U.S. at 554, the Supreme Court held that "the commencement of a class action suspends the applicable statute of limitations as to all asserted members of the class who would have been parties had the suit been permitted to continue as a class action." Once the class action is dismissed, the time begins to run again. *Stone Container Corp. v. United States*, 229 F.3d 1345, 1354-55 (Fed. Cir. 2000) (citing *American Pipe*, 414 U.S. at 554 and *Crown, Cork & Seal Co. v. Parker*, 462 U.S. 345, 351 (1983)). *Id.* at 1355. The impact of these well-established rules on Defendants' statute of limitation defense is decisive. Even accepting the notion that Defendants' "repudiation" of their fiduciary duties could ever cause accrual of Plaintiffs' 1908 Action, because this "repudiation" occurred during the first D.D.C. action, the statute of limitation did not begin running **until the first D.D.C. action was dismissed.** *See id*. Thus, at a minimum, Plaintiff had until six years after January 27, 2016, or **until January 27, 2022**, within which to file the present action, and it was timely filed on March 3, 2021. *See id*.

C. PLAINTIFFS' CLAIMS FALL WITHIN THE APA WAIVER OF SOVEREIGN IMMUNITY

Defendants also misstate the law of sovereign immunity in seeking dismissal of Plaintiffs' claims pursuant to the Administrative Procedures Act ("APA"). The APA indisputably provides a waiver of sovereign immunity that Defendants seek to avoid by urging the Court to apply law related to claims for judicial review under the APA. Section 702 of the APA provides the requisite waiver of sovereign immunity:

> An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority **shall not be dismissed nor relief therein be denied on the ground that it is against the United States** or that the United States is

> an indispensable party. The United States may be named as a defendant in any such action, and **a judgment or decree may be entered against the United States** . . .

(emphasis added). Section 702 waives sovereign immunity for actions (such as this one) against a federal official seeking relief "other than money damages." *See* 5 U.S.C. § 702. Critically, although housed within the APA, it is well-settled that the "APA's waiver of sovereign immunity **applies to any suit whether under the APA or not**." *Chamber of Commerce of the United States v. Reich*, 74 F.3d 1322, 1328 (D.C. Cir. 1996) (emphasis added).

> The legislative history of this provision could not be more lucid. It states that this language was intended 'to eliminate the defense of sovereign immunity with respect to any action in a court of the United States seeking relief other than money damages and based on the assertion of unlawful official action by a Federal officer. . . . .

Schnapper v. Foley, 667 F.2d 102, 107 (D.C. Cir. 1981) (citation and quotation marks omitted).

The present claim is not brought under the provisions of the APA to review an agency action; it falls within the clear contours of the waiver of sovereign immunity in the APA. The Court exercises original jurisdiction over this action under 28 U.S.C. §§ 1331, 1332 and under 28 U.S.C. § 1361 as federal questions, and also under 5 U.S.C. § 702 for injunctive relief and to compel federal officials to perform mandatory trust responsibilities.

Defendants' attempt to challenge Plaintiff's APA "claim" fails for multiple reasons. As noted above, while the APA provides a waiver of sovereign immunity, Plaintiffs do not bring a cause of action under the APA. Therefore, that claims brought under the APA must be alleged in a particular way, Defs. Memo at 27-28, is irrelevant. Additionally, the cases Defendants cite involved claims brought under the APA. *See In re Long-Distance Telephone Service Federal Excise Tax Refund Litig*., 751 F. 3d 629 (D.C. Cir. 2014); *Norton v. S. Utah Wilderness All.*, 542 U.S. 55 (2004); *El Paso Natural Gas Co. v. United States*, 750 F.3d 863 (D.C. Cir. 2014); *Anglers Conservation Network v. Pritzker*, 809 F.3d 664 (D.C. Cir. 2016); *N.C. Fisheries Ass'n v.*

Gutierrez, 550 F.3d 16 (D.C. Cir. 2008). Defendants' cases are also factually distinct because, with one exception, none involved trusts. *Cf. id*. The exception is *El Paso Natural Gas*, but that case is also clearly distinguishable because it involved a **bare** trust which imposed no duties on the government. 750 F.3d at 897.[23]

In sum, Defendants' APA case law has no application to claims premised on the unique trust and fiduciary obligations Defendants owes to the individual Freedmen minors. Under both the APA and more specific law governing the federal-Freedmen relationship, this Court has jurisdiction to: (1) determine whether Defendants have provided the minor Freedmen with a meaningful accounting that comports with both its obligation as trustee and its statutory mandate, and, if the Defendants have failed to do so; and (2) to direct Defendants to perform such a meaningful accounting. If a shortfall is found, this Court also has the jurisdiction to award restitution to Plaintiffs to restore them to the position they would have been in but for the Defendants' negligence and breach of fiduciary obligations.

D. PLAINTIFFS STATE A CLAIM FOR AN ACCOUNTING UPON WHICH RELIEF MAY BE GRANTED

The status of the United States as trustee for Freedmen minors in general, and George Curls in particular, is well established. Congress ratified and recognized these longstanding trust responsibilities in the 1908 Act. Beginning on Page 28 of their Memorandum, however, Defendants engage in a protracted attack on Plaintiffs' action for an accounting. The essence of Defendants' Motion to Dismiss is the irrational proposition that the dereliction of Defendants' trust

[23] Significantly, the *El Paso* Court also recognized that a different statute "[though] sparsely worded, nevertheless went 'beyond a bare trust' by investing the United States with 'discretionary authority to make direct use of portions of the trust corpus.'" 750 F.3d at 894.

responsibilities (*e.g.*, their complete failure to account for funds from the Freedmen minors' allotments) is not actionable. Clearly the Defendants fail to appreciate the weight of their obligations, and to provide an accounting to the earliest possible date. Contrary to Defendants' argument, **the 1908 Act contains specific enforceable directives from Congress to the Department of Interior to manage and protect allotments issued under the Curtis Act to Freedmen minors, such as George Curls.** The first two paragraphs of Section 6 of the 1908 Act are set forth below:

> SEC 6. That the persons and property of minor allottees of the Five Civilized Tribes shall, except as otherwise specifically provided by law, be subject to the jurisdiction of the probate courts of the State of Oklahoma. The Secretary of the Interior is hereby empowered, under rules and regulations to be prescribed by him, **to appoint such local representatives** within the State of Oklahoma who shall be citizens of that State or now domiciled therein as he may deem necessary **to inquire into and investigate the conduct of guardians or curators having in charge the estates of such minors, and whenever such representative or representatives of the Secretary of the Interior shall be of opinion that the estate of any minor is not being properly cared for by the guardian or curator, or that the same is in any manner being dissipated or wasted or being permitted to deteriorate in value by reason of the negligence or carelessness or incompetency of the guardian or curator, said representative or representatives of the Secretary of the Interior shall have power and it shall be their duty to report said matter in full to the proper probate court and take the necessary steps to have such matter fully investigated, and go to the further extent of prosecuting any necessary remedy, either civil or criminal, or both, to preserve the property and protect the interests of said minor allottees; and it shall be the further duty of such representative or representatives to make full and complete reports to the Secretary of the Interior.** All such reports, either to the Secretary of the Interior or to the proper probate court, shall become public records and subject to the inspection and examination of the public, and the necessary court fees shall be allowed against the estates of said minors. The probate courts may, in their discretion appoint any such representative of the Secretary of the Interior as guardian or curator for such minors, without fee or charge.
>
> And said representatives of the Secretary of the Interior are further authorized, **and it is made their duty, to counsel and advise all allottees, adult or minor, having restricted lands of all of their legal rights with reference to their restricted lands, without charge, and to advise them in the preparation of all leases authorized by law to be made**, and at the request of any allottee having restricted land he shall, without charge, except the necessary court and recording fees and expenses, if any, in the name of the allottee, take such steps as may be necessary, including the bringing of any suit or suits

> and the prosecution and appeal thereof, to cancel and annul any deed, conveyance, mortgage, lease, contract to sell, power of attorney, or any other encumbrance of any kind or character, made or attempted to be made or executed in violation of this Act or any other Act of Congress, and to take all steps necessary to assist said allottees in acquiring and retaining possession of their restricted lands.

(emphasis added)

Instead of enforcing the above mandates, the Secretary has historically engaged in unconscionable conduct to discriminate against the Freedmen. See **Exhibit H** attached hereto (also filed as ECF-22 in the first D.D.C. action) for correspondence evidencing overt racial discrimination by the United States against the Freedmen. Even to the present day, through this Motion, Defendants continue this discrimination by refusing to acknowledge their fiduciary obligations toward the Freedmen. Defendants' current excuse is that the Secretary was not *required* to appoint representatives, that this duty was only discretionary, and thus the Secretary could in his discretion ignore Section 6 and be totally off the hook. Defs. Memo at 31-33. As shown above, Defendants' position is absurd because Section 6 assigned the Department of Interior representatives mandatory duties **and** there is record proof that such representatives were actually appointed, including for the Curly Freedmen minors. In addition to calling for appointment such representatives, Section 6 "**made [it] their duty**, to counsel and advise all allottees, adult or minor . . of all of their legal rights with reference to their restricted lands. . .." (emphasis added). It would make no sense for Congress to assign such mandatory duties to nonexistent representatives, or to permit the Secretary to ignore the representatives' duties at his option. **Yet that is what Defendants' interpretation allows!**

Under the 1908 Act restrictions against alienation of Freedmen allotments, such as the allotments to Mr. Curls, were not removed. Accordingly, royalties derived from leases on Mr. Curls' allotments should have been placed in trust by the Department of Interior under the terms

of Sections 2 and 6 of the 1908 Act. Instead, the Interior Department has no record of these royalties; the guardian did not account for royalties owed to Mr. Curls as required by the Act, and the Secretary of Interior did not and has not taken any action. These failures could not have been innocent, but were the result of a deliberate strategy to swindle land and money from Freedmen. It is well known that Congress created the conditions for widespread graft and abuse through the 1908 Act. As a legal historian recently reported:

> That Act transferred jurisdiction over land, persons and property of Indian "minors and incompetents" from the Interior Department, to local county probate courts in Oklahoma. Related legislation also enabled the Interior Department to put land in or out of trust protection based on its assessment of the competency of Native American allottees and their heirs.
>
> Unfettered by federal supervisory authority, local probate courts and attorneys seized the opportunity to use guardianships to steal Native Americans estates and lands. As described in 1924 by Zitkála-Šá, a prominent Native American activist commissioned by the Secretary of Interior to study the issue, "When oil is 'struck' on an Indian's property, it is usually considered *prima facie* evidence that he is incompetent, and in the appointment of a guardian for him, his wishes in the matter are rarely considered."

Seielstad, Andrea (Prof. of Law), *The disturbing history of how conservatorships were used to exploit, swindle Native Americans,* Univ. of Dayton Mag. (August 20, 2021), online at https://udayton.edu/magazine/2021/08/conservatorship.php. Given the extensive abusive use of guardianships to swindle adult Native Americans, similar unconscionable treatment of their slaves was a certainty. If anything, cheating the Freedmen minors was easier to accomplish because there was no intermediate proof of "incompetency" required for these children. *See id.*

Once a fiduciary relationship is established by statute, the government's fiduciary duties follow as a matter of law. While rooted in and derived from statutes and treaties identified herein, these duties "are largely defined in traditional equitable terms" and may be filled in by reference

to trust law.[24] Courts "must infer that Congress intended to impose on [the] trustees traditional fiduciary duties unless Congress has unequivocally expressed an intent to the contrary."[25]

In this case, **Defendants effectively concede, as they must, there is a trust relationship between the government and minor Freedmen by reason of the 1908 Act**. Defs. Memo at 30-31, fn.11 (*Truskett v. Closser*, 236 U.S. 223, 229 (1915), "held that, notwithstanding the language unconditional language [*sic*] in Section 1 [of the 1908 Act] removing all restrictions from Freedmen allotments, the conditions in Section 2 and 6 also applied to Freedmen minors' allotments")) (emphasis added). *See also Self v. Prairie Oil & Gas Co.*, 28 F.2d 590, 593 (8th Cir. 1928) ("[A]fter the going into effect of [the 1908 Act], leases and extensions of prior leases of minor allottees . . .could only be made in the manner permitted by the act") citing *Truskett. Self v. Prairie Oil & Gas Co*., 28 F.2d 590, 593 (8th Cir. 1928).

It is axiomatic that a "court of equity, having jurisdiction over the administration of trusts, will give to the beneficiaries of a trust such remedies as are necessary for the protection of their interests . . . ." William F. Fratcher, *3 Scott on Trusts* § 199, at 203-04 (4th ed. 1988). Accordingly, this Court has the authority and responsibility to enforce trust duties using its inherent equitable power to ensure protection of the beneficiary. *See, e.g., Vill. of Brookfield v. Pentis*, 101 F.2d 516, 520-21 (7th Cir. 1939) ("Courts of equity have original inherent jurisdiction to decree

[24] *Cobell v. Norton*, 240 F.3d 1081, 1099 (D.C. Cir. 2001) ("*Cobell VI*").
[25] *Id*. at 1100 (quoting *NLRB v. Amax Coal Co., Div. of Amax*, 453 U.S. 322, 330 (1981)); *see also Nevada v. United States*, 463 U.S. 110, 142 (1983) ("[W]here only a relationship between the Government and the tribe is involved, the law respecting obligations between a trustee and a beneficiary in private litigation will in many, if not all, respects adequately describe the duty of the United States."); *White Mountain Apache*, 537 U.S. at 475; *Cobell VI*, 240 F.3d at 1098-99 ("It is no doubt true that the government's fiduciary responsibilities necessarily depend on the substantive laws creating those obligations.… This does not mean that the failure to specify the precise nature of the fiduciary obligation or to enumerate the trustee's duties absolves the government of its responsibilities." (internal quotation and citations omitted)).

and enforce trusts and to do whatever is necessary to preserve them from destruction."); *Manchester Band of Pomo Indians, Inc. v. United States*, 363 F. Supp. 1238, 1242 (N.D. Cal. 1973) (finding that district courts have "jurisdiction over actions to compel the responsible officers of the United States to perform [their trust] duties in the event [that] they have not done so.").

In sum, this Court exercises jurisdiction over Plaintiffs' claim under 28 U.S.C. § 1331 as a federal question. This Court has the equitable power to enforce Defendants' statutory trust responsibilities. As noted, 5 U.S.C. § 702 of the APA provides the necessary waiver of sovereign immunity, but Plaintiffs state a cause of action distinct from and not dependent upon the APA.

Plaintiffs' cause of action is derived in part from the 1908 Act that establishes the trust relationship between the Secretary and the Freedmen. In the seminal case of *United States v. Mitchell*, 463 U.S. 206 (1983) ("*Mitchell II*"), the Supreme Court recognized a substantive right to enforce trust duties when federal statutes and regulations establish a trust relationship between the government and Indian trust land beneficiaries. The Court concluded that a:

> fiduciary relationship necessarily arises when the Government assumes such elaborate control over . . . property belonging to Indians. All of the necessary elements of a common law trust are present: a trustee (the United States), a beneficiary (the [tribe **or] Indian allottees**), and a trust corpus (Indian timber, lands, and funds).

Id. at 225 (emphasis added). *Mitchell II* further held that a cause of action to obtain traditionally available remedies for the violation of the rights of the beneficiaries is inherent in and "naturally follows" from the creation of the trust. *Id*. at 226.

The Supreme Court reaffirmed the result of *Mitchell II* in *United States v. White Mountain Apache Tribe*, 537 U.S. 465 (2003). There, the plaintiff tribe sued to recover for the government's failure to maintain reservation buildings that had fallen into disrepair while occupied by the government. The government moved to dismiss, arguing it was not legally bound to maintain or

restore the property. *Id*. at 469-70. The Supreme Court flatly rejected the government's argument, finding the absence of law to "expressly subject the Government to duties of management and conservation" to be immaterial. *Id.* at 475. Instead, the Court relied on *Mitchell II* and held that where a statute gave rise to a trust relationship and the government exercised control over the trust property, it "naturally follow[ed]" that the government had a judicially enforceable fiduciary obligation to preserve the trust property. *Id.* at 475-76 (citing *Mitchell II*, 463 U.S. at 226).

Here, similar to *Mitchell II* and *White Mountain Apache*, it is alleged, *inter alia*, that the United States held funds that belong to Mr. Curls and other Freedmen minors and has assumed the fiduciary obligations of a trustee. The longstanding trust relationship between the Freedmen minors and Defendants is rooted in and derived from federal statutes, as well as common-law principals. This body of law gave the United States control over and responsibility for Freedmen funds, but obligates the United States to the full range of fiduciary obligations. It "naturally follows" from the establishment of this trust relationship that an ordinary right of action seeking an accounting and other equitable relief is available to the Freedmen. *See Cobell v. Norton*, 240 F.3d 1081, 1101 (D.C. Cir. 2001) ("*Cobell VI*") ("While *Mitchell II* involved a claim for damages, nothing in that decision or other Indian cases would imply that appellants are not entitled to declaratory or injunctive relief. Such remedies are the traditional ones for violations of trust duties*."); Beckett v. Air Line Pilots Ass'n*, 995 F.2d 280, 286 (D.C. Cir. 1993) ("Just as an intended third party beneficiary may sue to enforce a contract, it is equally fundamental that the beneficiary of a trust may maintain a suit to compel the trustee to perform his duties as trustee or to redress a breach of trust." (citing *Restatement (Second) of Trusts* § 199) (1959)).

That cause of action is for a basic fiduciary duty, an accounting, and at this time, Plaintiffs seek an accounting. *See e.g.*, Compl. ¶ 37. This is not an unusual cause of action or relief. As explained by the Federal Circuit:

> An accounting is a species of compulsory disclosure, predicated upon the assumption that the party seeking relief does not have the means to determine how much – or, in fact, whether – any money properly his is being held by another. The appropriate remedy, particularly where the determinations may be detailed and complex, is an order to account in a proceeding in which the burden of establishing the non-existence of money due to the plaintiff rests upon the defendant.

Rosenak v. Poller, 290 F.2d 748, 750 (D.C. Cir. 1961).

Under the 1866 Treaties, Freedmen and Five Civilized Tribes members are to be treated equally. However, the United States takes a paternalistic view towards the Tribes, while rejecting the proposition that any duty whatsoever is owed to the Freedmen. The United States perversely continues to advance defenses against the Freedmen that have been specifically rejected in *Cobell v. Babbitt*, 30 F. Supp. 2d 24 (D.D.C. 1998). Some examples are: disparate treatment in connection with the government's handling of Plaintiffs' case, discussions of trust status, and the statute of limitations. In regard to these three factors, *Cobell* held at 30 F. Supp.2d 24, as follows:

> [S]several courts have recognized and as the Plaintiffs allege, allegations **of breach of trust against government officials with regard to the administration of Indian trusts arise under the federal common law**. *See County of Oneida v. Oneida Indian Nation*, 470 U.S. 226, 105 S. Ct. 1245, 84 L.Ed.2d 169 (1985) (explaining that federal question jurisdiction existed in an ejectment action brought by Indian Plaintiffs based, in part, on federal common law); *Vizenor v. Babbitt*, 927 F. Supp. 1193 (D. Minn.1996) (holding that, in a suit against the Secretary and Assistant Secretary of the Interior for breach of trust, the claims arose under federal common law); *White v. Matthews*, 420 F. Supp. 882, 887-88 (D.S.D. 1976) (holding that allegations of breach of trust against the government in a suit brought by Indian Appellants involved federal question jurisdiction under federal common law). Actions arising under federal common law fall within the general federal question jurisdiction conferred by 28 U.S.C. § 1331. *Illinois v. City of Milwaukee*, 406 U.S. 91, 100, 92 S. Ct. 1385, 31 L.Ed2d 712 (1972). The Supreme Court has repeatedly upheld the existence of a trust relationship between the government and the Indian people. *See e.g., United States v. Mitchell II*, 463 U.S. at 225, 103 S. Ct. 2961. The Plaintiffs allege that the government, including the Secretary of the Treasury (to a limited extent) has breached

> these recognized duties. Therefore, because the Appellants' allegations against the Secretary of the Treasury arise under the statutory law and common law of the United States, this Court has "arising under" jurisdiction over the Appellants' claim.

Cobell, 30 F. Supp. 2d at 38 (emphasis added).

> [Statute of Limitation] First, *the case law in this Circuit shows a strong disfavor of making determinations on limitations issues at the motion to dismiss stage*. *See Firestone v. Firestone*, 76 F.3d 1205, 1210 (D.C. Cir. 1996) holding that the district court erred by dismissing a case with prejudice on a motion to dismiss rather than summary judgment); *Richards v. Mileski*, 662 F.2d 65, 73 (D.C. Cir. 1981) ("There is an inherent problem in using a motion to dismiss for purposes of raising a statute of limitations defense. Although it is true that a complaint sometimes discloses such defects on its face, it is more likely that the Appellant can raise factual setoffs to such an affirmative defense."); *Jones* [*v. Rogers Mem'l Hosp*., 143 U.S. App. D.C. 51, 442 F.2d 773, 775 n.2 775 (1971)] ("The issue of when Appellants decedent discovered the injury, or through the exercise of reasonable diligence should have known of the facts giving rise to the claim, is properly one for the trier of fact, save for the exceptional case when it can be established that there is no material issue of fact."). Second, even though the Court may properly judge a motion to dismiss for lack of jurisdiction that raises the limitations defense at the juncture under a summary judgment standard, *see In re Swine Flu Immunization prods. Liability Litigation*, 880 F.2d 1439, 1441-43 (D.C. Cir. 1989), to do so would be premature at this point for the same reasons that summary judgment itself is premature. Namely, discovery has not been completed and to decide whether genuine issues of material fact exist at this point would be imprudent.

Id. at 45 (emphasis added).

It is beyond reasonable dispute that Defendants have a fiduciary duty to provide an accounting and that this Court has the authority to compel them to do so. *See, e.g.*, *Cobell VI*, 240 F.3d at 1104 ("'It is fundamental that **an action for accounting is an equitable claim** and that courts of equity have original jurisdiction to compel an accounting.'" (quoting *Klamath & Modoc Tribes*, 174 Cl. Ct. at 487) (emphasis added); George T. Bogert, *The Law of Trusts & Trustees* § 963 (2d ed. Rev. & 3d ed. 2007) ("In order to obtain an accounting it is not necessary for the beneficiary to allege that there is any payment immediately due him under the trust or that the trustee in some way is in default.")). Should the accounting reveal that the government has not

faithfully carried out its statutory trust obligations, Plaintiffs may also seek such additional equitable relief as may be appropriate to redress those breaches. See Compl. ¶¶ 29, 33, 38.

Ms. Tanner-Brown and Harvest members are persons who are entitled to an accounting of funds held in trust or that should have been held in trust by the Secretary of Interior. The Secretary was required under the Act of 1908 to oversee and record the disposition of proceeds from royalties on allotted land held in trust or restricted status by the Secretary of Interior. Plaintiffs meet the conditions for such accounting. Although restrictions on allotments to Freedmen were removed in 1907, those restrictions continued under the provisions of the Act of 1908 as it related to minor Freedmen. The Secretary thus has a duty under Section 6 of the Act to provide an accounting to representatives of minor Freedmen of royalties derived from leases on restricted land held by Freedmen minors. Plaintiffs have stated a viable claim for this accounting that thus should go forward. By necessity, this accounting duty falls squarely on the Defendants under the reporting provisions of the 1908 Act. The Plaintiffs do not have access to the information that would allow them to conduct their own accounting, and Defendants should have held these records. In addition, this Court is authorized to compel an accounting of all the Freedmen assets, including non-monetary assets, under 5 U.S.C. § 702. Thus, this Court is authorized to, indeed required to, compel an accounting of the Freedmen funds.

VI. CONCLUSION

Plaintiffs have provided the Court multiple jurisdictional and statute of limitations grounds to retain this action, and the factual allegations more than sufficient to state a cause of action for an accounting based on the parties' trust relationship. Plaintiffs respectfully request that the Court deny the Defendants' Motion to Dismiss in its entirety. Given the complexity of Defendants' Motion, Plaintiffs request oral argument pursuant to D.D.C Civ. LR 7 (f).

Dated: October 21, 2021

Respectfully submitted,

s/Percy Squire
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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of October 2021, I electronically filed this Plaintiffs' Memorandum Of Points And Authorities In Opposition To Defendants' Motion To Dismiss with the Clerk of the U.S. District Court, District of Columbia, using the CM/ECF System, which will send notification of such filing to all counsel of record.

/s/ Percy Squire
Percy Squire, Ohio Bar No.(0022010)

APPENDIX

(Items listed will be filed with Plaintiffs' Memorandum.)

EXHIBIT A. 5/1/2013 Letter to Tanner-Brown from Class Settlement; request proof of ownership of restricted land as of September 30, 2009 [Filed as **Exhibit A and ECF 16-1** in D.D.C. Case No. 1:14-cv-01065-RC].

EXHIBIT B. Oil and Gas Mining Lease dated January 22, 1907, between Julius Curls as Lessor, and Missouri Mining Company as Lessee, with respect to land within Indian Territory. [Filed as **Exhibit B and ECF 16-2** in D.D.C. Case No. 1:14-cv-01065-RC].

EXHIBIT C. Oil and Gas Lease dated May 1, 1908, between Julius Curls as Lessor, and Charles Nobles, Fred Rowe, and William Wood as Lessees. [Filed as **Exhibit C and ECF 16-3** in D.D.C. Case No. 1:14-cv-01065-RC].

EXHIBIT D. Probate Order In Re Matter of Estate of James Curls, a minor, dated September 15, 1908 authorizing Oil and Gas Mining Lease with Willard Oil. Although order states land is known as wild cats land for oil and mining purposes, the company still willing to lease for oil and mining purposes. [Filed as **Exhibit D and ECF 16-4** in D.D.C. Case No. 1:14-cv-01065-RC].

EXHIBIT E. Oil and Gas Lease between Julius and Maggie Curls, as lessor and W.L. Jeffords as lessee, dated June 27, 1916. [Filed as **Exhibit E and ECF 16-5** in D.D.C. Case No. 1:14-cv-01065-RC].

EXHIBIT F (filed as **ECF 16-6 and 16-7**in D.D.C. Case No. 1:14-cv-01065-RC**)**. Certified record of *In Re the Guardianship* of the Curls children Willie, Edward, James, George, Stephenia, Clarence, Beatrice, Julius Curls, minors. On **August 14, 1906** their ages were as follows: Willie (age 13), Edward (age 12), James (11), George (age 9), Stephenia age (8), Clarence (age 6),

Beatrice (age 5), Julius Curls (age 2). In Petition of same date their father Riley Curls requests that Rathbun Alden of Indian Territory be appointed guardian. The following leases are reflected in this Guardianship record previously filed as ECF 16-6 and 16-7:

1. Oil and Gas Mining lease on behalf of **Willie Curls**, dated October 7, 1907 with Willard Oil Company "under terms prescribed by the Secretary of the Interior," with respect to lands in the Cherokee Nation, Indian Territory. Willie is described as a Freedmen citizen of the Cherokee Nation.
2. Report of Master in Chancery authorizing Rathbun Alden to lease **Julius Curls**' property to Willard Oil Company.
3. Report of Master in Chancery dated November 15, 1907 authorizing Rathbun Alden to lease **Julius Curls**' property for agricultural purposes for a five year term.
4. Petition dated August 7, 1907, requesting permission to lease property of **Willie Curls**, Freedmen citizen of the Cherokee Nation born January 7, 1892, to Willard Oil Company "under terms prescribed by the Secretary of the Interior," with respect to land located in the Cherokee Nation, Indian Territory.
5. Department of Interior filing dated July 23, 1907 by **Acting United States Indian Agent** to attorney for Rathbun Alden, Guardian, stating that "notice of sales of leases of **Willie**, **Edward** and **James Curls**, minors, by their guardian Rathbun Alden" has been "posted in this office in a conspicuous place where it will remain until after the sale on the first date of August, 1907." ECF Doc. 16-6, page 9 of 20.
6. Confirmatory Order dated October 19, 1907, for lease of the lands of ward **James Curtis** for "Oil and Gas Mining purpose . . .." Said lease " is upon the form and according to the terms and conditions prescribed by the Secretary of the Interior" . . .."

7. Report of Rathbun Alden that on October 10, 1907 he executed an oil and gas mining lease on behalf of James Curls to Willard Oil Company. Copy of the Lease is attached, and states the leased land is within the Cherokee Indian Nation in Indian Country.
8. Court Order dated October 27, 1907 authorizing the payment of total attorneys fees of $2800 to two law firms for legal services rendered on behalf of the seven Curls children (including George) with respect to the application for enrollment to the Commissioner of the Five Civilized Tribes and the Department of the Interior of the Curls children, **including George Curls**.
9. Report of Leasing by Rathbun Alden that on November 15, 1907, he executed a lease of land within the Cherokee Indian Nation in Indian Country for agricultural purposes on behalf of Stephenia Curls. A copy of the Agricultural Lease is attached.

Exhibit F continued, filed as ECF 16-8, in D.D.C. Case No. 1:14-cv-01065-RC]:

1. Affidavit of John Hall November 9, 1907, stating that 50 cents per acre is a fair rental value for lease of "pasture and hay land" for agricultural purposes in Indian Country. Multiple similar affidavits are included in ECF 16-8.
2. Petition to Lease Lands of Ward for Agriculture Purposes dated November 11, 1907 filed by Rathbun Alden on behalf of **Julius Curls**, a Cherokee Freedmen, to lease land the ward owns in Indian Territory.
3. Petition to Lease Lands of Ward for Agriculture Purposes dated November 11, 1907 filed by Rathbun Alden on behalf of **Beatrice Curls**, a Cherokee Freedmen, to lease land the ward owns in Indian Territory.

4. Petition to Lease Lands of Ward for Agriculture Purposes dated November 11, 1907 filed by Rathbun Alden on behalf of **Stephenia Curls**, a Cherokee Freedmen, to lease land the ward owns in Indian Territory.
5. Masters Report dated November 15, 1907 filed on behalf of minors **Stephenia and Beatrice Curls** to lease hay and pasture lands in Indian Territory for agricultural purposes.
6. Confirmatory Order dated November 15, 1907, for lease of the lands of ward **Julius Curls** in Indian County for agricultural purposes . . .."
7. Report of Rathbun Alden that on November 11, 1907 he executed a lease lands located in Cherokee Indian Nation in Indian Country for agricultural purposes on behalf of **Julius Curls**. The Agricultural Lease for a five year term is attached.
8. Report of Rathbun Alden that on November 15, 1907 he executed a lease of lands located in Cherokee Indian Nation in Indian Country for agricultural purposes on behalf of minor **Beatrice Curls**. The Agricultural Lease for a five-year term is attached.
9. Confirmatory Orders dated November 1907, for lease of the lands of wards **Stephenia and Beatrice Curls** in Indian County for agricultural purposes.

Exhibit F continued, filed as ECF 16-9, in D.D.C. Case No. 1:14-cv-01065-RC

Exhibit F continued, filed as ECF 16-10, in D.D.C. Case No. 1:14-cv-01065-RC:

1. Petition to Lease for Oil and Gas Mining Purposes dated September 15, 1908 filed by Rathbun Alden on behalf of **James Curls**, a Cherokee Freedmen, to lease land the ward owns in Indian Territory to Willard Oil Company.
2. Order of Court In Re Matter of Estate of James Curls, a minor, dated September 15, 1908 authorizing Oil and Gas Mining Lease with Willard Oil. Although order states

land is what is "known as wild cats land for oil and mining purposes," the company is willing to lease. It is in best interests of minor to test for oil and gas mining purposes during the minority of the ward.

3. Oil and Gas Mining Lease executed by Riley Curls as guardian for **Willie Curls**, a minor, to lessee Willard Oil Company, dated September 15, 1908.
4. Order of Court In Re Matter of Estate of **Willie Curls**, a minor, dated September 15, 1908 authorizing Oil and Gas Mining Lease with Willard Oil. Although order states land is what is "known as wild cats land for oil and mining purposes," the company is willing to lease. It is in best interests of minor to test for oil and gas mining purposes during the minority of the ward.
5. Petition to Lease for Oil and Gas Mining Purposes dated September 15, 1908 filed by Rathbun Alden on behalf of **Willie Curls**, a Cherokee Freedmen, to lease land the ward owns in Indian Territory to Willard Oil Company.
6. Order of Court dated February 5, 1909 that the Guardian's withdrawal of $9.00 from minor James Curls' bank account at National Bank was proper.

Exhibit F continued [filed as **ECF 16-11** in D.D.C. Case No. 1:14-cv-01065-RC].

Exhibit F continued [filed as **ECF 16-12,** in D.D.C. Case No. 1:14-cv-01065-RC].

Exhibit F continued [filed as **ECF 16-13,** in D.D.C. Case No. 1:14-cv-01065-RC].

Exhibit F continued [filed as **ECF 16-14,** in D.D.C. Case No. 1:14-cv-01065-RC].

Exhibit F continued [filed as **ECF 16-15,** in D.D.C. Case No. 1:14-cv-01065-RC].

Exhibit F continued [filed as **ECF 16-16,** in D.D.C. Case No. 1:14-cv-01065-RC].

Exhibit F continued [filed as **ECF 16-17,** in D.D.C. Case No. 1:14-cv-01065-RC].

Exhibit F continued [filed as **ECF 16-18,** in D.D.C. Case No. 1:14-cv-01065-RC].

EXHIBIT F, continued [filed as **ECF 16-19,** in D.D.C. Case No. 1:14-cv-01065-RC]: Numerous documents from the minor Curls' guardianship action regarding Royalty payments.

EXHIBIT F, continued [filed as **ECF 16-20,** in D.D.C. Case No. 1:14-cv-01065-RC].

EXHIBIT G. [Filed as **ECF 16-21,** in D.D.C. Case No. 1:14-cv-01065-RC]. Engagement List of Clients; Descendants List of Riley Curls Dawes Roll #4300 / Kern Clifton Dawes Roll #4314 / George W. Curls Dawes Roll #4304.

EXHIBIT H. Correspondence from Department of Interior Concerning Freedmen dated August 11, 1938 and October 1, 1941, which evidences overt racial discrimination by the United States against Freedmen.

EXHIBIT I. *In Re: Effect of Cherokee Nation v. Nash*, etc., Case No. SC-17-07 (Feb. 22, 2021).

EXHIBIT J. George Curls' "Allotment Deed" and "Homestead Deed" received on December 5, 1910.