

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

LEATRICE TANNER-BROWN, et al.)	
)	
Plaintiffs,)	
v.)	
)	
DEB HAALAND,)	
Secretary of the Interior,)	Civil Action No. 21-565(RC)
)	
Defendants.)	
_____)	

**PLAINTIFFS’ REPLY TO RESPONSE TO DEFENDANTS’ MEMORANDUM IN
OPPOSITION TO PLAINTIFFS’ MOTION TO ALTER OR AMEND JULY 8, 2022
ORDER OF DISMISSAL (DOCKET #29)**

Defendants’ Opposition to Plaintiffs’ Motion to Alter or Amend, ECF Docket #29, is grounded on the following arguments:

1. The legal arguments in the motion to alter and amend were available prior to entry of judgment; and
2. The trust relationship between the federal government and Native American tribes does not resemble a traditional trust relationship bearing all the usual attendant fiduciary responsibilities; and
3. Plaintiffs failed to establish or allege facts showing that they would have been established to an accounting under the 1908 Act.

For reasons discussed below, Defendants’ arguments are baseless. Accordingly, the motion to alter or amend should be granted.

I. PREVIOUSLY AVAILABLE ARGUMENT

Defendants’ contention that Plaintiffs should have raised the argument that the Court’s dismissal order improperly shifted the burden of proof to Plaintiffs, ignores the fact that until the

Court issued its order, Plaintiffs were not aware of the Court's position that Plaintiffs had the duty to point out trust res mismanagement by Defendants. The Court's dismissal order states in order to establish standing, Plaintiffs need to identify a particularized concrete injury traceable to Defendants. In this respect the dismissal order should be altered or amended because it does not focus on the correct basis for Plaintiff's Complaint, the failure of Defendant Haaland to provide an accounting. It is the failure to provide an accounting that is the injury, not mismanagement of the trust assets. Until the Court issued its dismissal order, Plaintiff was not aware that the Court had improperly shifted the burden of proof to Plaintiffs. Accordingly, Plaintiffs could not have raised this issue earlier.

II. TRUST RELATIONSHIP

The Defendants' argument concerning the trust relationship between the federal government and Native Americans, is contrary to settled law.

In *United States v. Creek Nation*, 295 U.S. 103 (1935) the Court stated, unless Congress has directed otherwise, the federal executive is held to a strict standard of compliance with fiduciary duties. Similarly, in *Seminole Nation v. United States*, 316 U.S. 286 (1942) the Court imposed fiduciary obligations applicable to private trustees on federal officials dealing with Indians. Some of Plaintiffs putative class members are Seminole Freedmen.

In *United States v. Payne*, 264, U.S. 446, 448 (1942) the Court held federal officials are held to "moral obligations of the highest responsibility and trust" and "the most exacting fiduciary standards" and to be bound by every moral and equitable consideration to discharge its trust with good faith and fairness."

The Court affirmed this standard in *Morton v. Ruiz*, 415 U.S. 199, 236 (1974).

This Court also reiterated the application of ordinary trust standards in *Pyramid Lake Paiute Tribe v. Morton*, 354 F. Supp. 252 (D.D.C. 1972). These cases make clear unless Congress has specifically directed otherwise federal executive officials are obliged to adhere strictly to standard fiduciary principles. Defendants have cited no authority that traverses the above cases.

III. ACT OF MAY 27, 1908

Contrary to Defendants' arguments Section 6 of the Act of May 27, 1908 states the traditional relationship between the federal government and Freedmen minors was not changed, administration and oversight was delegated to this Probate Courts of Oklahoma. Congress however stated the Secretary of the Interior had a duty to monitor the conduct of the Oklahoma courts.

In light of the language in Section 6, Plaintiffs have requested that the Secretary of Interior provide an accounting of the management of Plaintiff Freedmen minors' assets.

Under traditional trust principles, Defendants have a clear duty in this connection.

IV. CONCLUSION

For the above reasons Defendants' Opposition should be rejected and the motion to alter or amend granted.

Dated: September 19, 2022

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via the Court's electronic filing upon counsel of record September 19, 2022.

s/Percy Squire.
Percy Squire, Esq.