Testimony for the Record
of the Environment and Natural Resources Division
U.S. Department of Justice
Before the Subcommittee for Indigenous Peoples of the United States
Committee on Natural Resources
U.S. House of Representatives
July 16, 2019

Chairman Gallego, Representative Cook, and Members of the Subcommittee, thank you for the opportunity to submit this testimony on H.R. 396.

H.R. 396

H.R. 396 states as a finding that the Miami Tribe of Oklahoma has challenged title to approximately 2,648,420 acres in the State of Illinois, which the Tribe claims was reserved and guaranteed to it by the United States in the Treaty of August 21, 1805, known as the Treaty of Grouseland. H.R. 396 would confer jurisdiction on the United States Court of Federal Claims to hear, determine, and render judgment on the Miami Tribe of Oklahoma's "land claim" notwithstanding any other law and without regard to the six-year statute of limitations for such actions (28 U.S.C. § 2501) or other legal or equitable defenses based on the passage of time or delay. H.R. 396 provides that the United States shall be the only entity or individual liable for such a claim, and that monetary damages shall be the only available remedy. The bill would extinguish all other claims of the Miami Tribe of Oklahoma or its members to title to these lands.

Discussion

The Department has serious concerns with H.R. 396, and therefore it cannot support the bill. The Miami Tribe's claim against the United States is based on federal actions occurring well over a century ago. It is now foreclosed by federal law, including the applicable statute of limitations. The claims of all other tribes are subject to these limitations, and the Department is aware of no valid basis for a special exception for this claim of the Miami Tribe of Oklahoma. In

general, therefore, the bill raises substantial fairness concerns, upends settled expectations, makes unjustified impositions on the federal fisc, and would serve as an undesirable and potentially expensive precedent.

In particular, the Miami Tribe of Oklahoma had an opportunity to bring its claims against the United States. In 1946, Congress provided a mechanism for tribes to litigate breach of treaty and other claims against the United States through the Indian Claims Commission Act (ICCA), which created the Indian Claims Commission (ICC) and granted it extraordinarily broad jurisdiction over a wide range of "ancient claims." Ch. 959, 60 Stat. 1049 (1946). The overriding purpose of the statute was to provide for final resolution of Indian claims. *United States v. Dann*, 470 U.S. 39, 45 (1985) (The "chief purpose of the [Act was] to dispose of the Indian claims problem with finality." (quoting H.R. Rep. No. 1466, 79th Cong., 1st Sess., 10 (1945))); *Temoak Band of Western Shoshone Indians v. United States*, 593 F. 2d 994, 998 (Ct. Cl. 1979) (Congress's intention was to "draw in all claims of ancient wrongs, respecting Indians, and to have them adjudicated once and for all.").

Thus, while Congress permitted tribes to bring historical claims of unprecedented breadth before the ICC, "to balance this permissiveness and to ensure finality, the Act established a five-year limitation on all claims existing before 1946." *Oglala Sioux Tribe of Pine Ridge Reservation v. United States*, 570 F.3d 327, 331 (D.C. Cir. 2009); *see also Navajo Tribe of Indians v New Mexico*, 809 F.2d 1455, 1465 (10th Cir. 1987) (Congress intended "the jurisdiction of the Commission … to be broad enough that no Tribe could come back to Congress ten years from now and say that it had a meritorious claim."). Section 12 of the ICCA provided that the "Commission shall receive claims for a period of five years after the date of the approval of this Act [August 13, 1946] and *no claim existing before such date but not presented*

within such period may thereafter be submitted to any court or administrative agency for consideration, nor will such claim thereafter be entertained by the Congress." 60 Stat. at 1052 (emphasis added). Accordingly, "it is well established that the Indian Claims Commission Act bars claims involving allotments or other property, claims involving title, claims to equitable relief, claims for damages, and related constitutional and procedural claims that accrued before 1946 and were not brought by August 13, 1951." *Oglala Sioux Tribe*, 570 F.3d at 331 (citing numerous cases).

The Miami Tribe brought numerous claims before the ICC (comprising approximately twenty separate cases or "dockets"), including numerous claims asserting that tribal lands recognized by the Treaty of August 1, 1805 were ceded without fair compensation, like the claim addressed by H.R. 396. These claims were investigated, evaluated, and litigated over many years (and at significant expense to the government). The total monetary judgments in favor of the Tribe's exceeded eleven million dollars. Under the ICCA, this process was the Tribe's exclusive remedy for any claims in law or equity against the United States that arose prior to 1946.[*]

Other tribes are foreclosed from seeking judicial relief for claims that were barred by the ICCA. *E.g., Paiute-Shoshone Indians of Bishop Colony v. City of Los Angeles*, 637 F. 3d 993 (9th Cir. 2011) (Tribe's claims against United States for conveyance of tribal land are barred by

[*] More recently, the Miami Tribe of Oklahoma brought claims for an accounting of its trust funds and non-monetary trust resources and an award of monetary damages for the alleged mismanagement of those funds in the Court of Federal Claims. *See Miami Tribe of Oklahoma v. United States*, No. 08-104L (Fed. Cl. filed May 30, 2008). As part of a settlement agreement reached in 2013, the United States paid the Tribe $925,000, and the Tribe agreed to waive and release any and all claims for damages or other relief "that are based on harms or violations occurring before the date of the execution of this Settlement Agreement by both Parties and that relate to the United States' management or accounting of Plaintiff's Trust funds or Plaintiff's Non-Monetary Trust Assets or Resources."

ICCA); *Navajo Tribe v. New Mexico*, 809 F.2d 1455, 1463-64 (10th Cir. 1987) (barring Navajo claims for land that were not brought before ICC); *Oglala Sioux Tribe v. United States*, 650 F.2d 140 (8th Cir. 1981) (holding that the Tribe's sole remedy for claim to Black Hills was pursuant to ICCA). The Department is aware of no principled reason to single out the Miami Tribe for special treatment, by permitting its ancient and statutorily barred land claim to be adjudicated. Consequently, this bill raises the specter that other tribes will seek similar exceptions for their long time-barred claims against the United States, undermining the purpose of the ICCA and the justification for the extraordinary government resources devoted to the ICC proceedings and awards.

The Miami Tribe's claim for compensation would also be barred by the six-year statute of limitations, a jurisdictional limitation that applies to all other claims, including tribal claims, filed in the Court of Federal Claims. 28 U.S.C. § 2501; *Hopland Band of Pomo Indians v. United States*, 855 F.2d 1573 (Fed. Cir. 1988) (claim based on alleged unlawful conveyance of tribal property barred by statute of limitations); *Catawba Indian Tribe of South Carolina v. United States*, 24 Cl. Ct. 24 (1991) (tribal claim for damages related to land claim barred by statute of limitations). There is no question that the Miami Tribe has been or should have been aware of this claim for decades, if not centuries. Again, the Department is aware of no reason why the Miami Tribe of Oklahoma's claim should be afforded special treatment unavailable to other litigants. We find no extraordinary circumstances or equities to justify an exception to the long-standing policy of the executive branch, which this Administration fully embraces, against ad hoc statute of limitations waivers and similar special relief bills. Also, there must be some definite, limited time during which the United States must be prepared to defend itself, and some finality to the pronouncements of the courts, the Congress, and the agencies.

Moreover, statutes of limitation serve valuable purposes: they "are designed to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared." *Order of R.R. Telegraphers v. Ry. Express Agency*, 321 U.S. 342, 348-49 (1944). Those concerns are particularly acute here, where the United States will be required to litigate claims based on events that occurred more than 150 years ago. Such litigation can be complex and expensive, and it typically requires hiring expert historians and other professionals. There is no valid basis to expend federal resources to undertake this effort here.

For these reasons, the Department opposes H.R. 396.

Thank you again for the opportunity to submit this testimony, and the Department would be happy to work with the Subcommittee to address any questions.