



## Miami Tribe of Oklahoma

3410 P St. NW, Miami, OK 74354 • P.O. Box 1326, Miami, OK 74355  
Ph: (918) 541-1300 • Fax: (918) 542-7260  
www.miamination.com



August 26, 2019

Hon. Ruben Gallego, Chairman  
Subcommittee for Indigenous Peoples of the United States  
Committee on Natural Resources  
1324 Longworth House Office Building  
Washington, DC 20515

*Via Electronic & U.S. Mail*

*Re: Miami Tribe of Oklahoma's Response to the U.S. Department of Justice's Testimony on H.R. 396*

Dear Chairman Gallego:

This letter follows up on the testimony filed by the United States Department of Justice (“DOJ” or “Department”) following the Subcommittee’s hearing on H.R. 396 (Rep. Mullin); a bill to provide for the equitable settlement of certain Indian land disputes regarding land in Illinois and for other purposes. DOJ’s testimony is more remarkable for what it *does not* state than for what it does. The Tribe offers a few clarifying responses for the record.

DOJ expresses concerns about the “fairness” of H.R. 396. Its testimony stands in stark contrast to the strong support expressed for H.R. 791 – the bill introduced in the 107<sup>th</sup> Congress that would have accomplished the same bilateral legislative solution as H.R. 396. Congressman Timothy Johnson, the sponsor of H.R. 791 stated that the legislation “enjoyed widespread support.”<sup>1</sup> Speaker Dennis Hastert described the H.R. 791 as “commonsense legislation,”<sup>2</sup> and Congressman John Shimkus, whose district currently includes the lands subject to the Tribe’s claim, described H.R. 791 as “straightforward and fair to both sides.”<sup>3</sup> DOJ’s newfound concern is notable, given that the Department did not oppose H.R. 791.

DOJ’s concern about fairness ignores the unique and counterbalancing relief afforded by the legislation: clearing title to 2.6 million acres of land irrespective of the success or failure of the Tribe’s claim before the CFC.

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<sup>1</sup> *Legislative Hearing on H.R. 521 and H.R. 791 Before the Committee on Resources, U.S. House of Representatives, 107th Cong. 3 (2002)* (hereinafter “Leg. Hr’g on H.R. 791”), available at: <https://www.govinfo.gov/content/pkg/CHRG-107hrg79494/pdf/CHRG-107hrg79494.pdf> (testimony of Congressman Timothy V. Johnson).

<sup>2</sup> *Id.* at 79 (prepared statement of Congressman J. Dennis Hastert, Speaker of the U.S. House of Representatives).

<sup>3</sup> *Id.* at 5 (prepared statement of Congressman John Shimkus).

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The Subcommittee is well aware of the purpose of ICC proceedings as well as the applicable statute of limitations for federal court claims. Of course, addressing this impediment *is one of the two primary purposes for the legislation*. DOJ's statement that it was aware of "no principled reason" to authorize the one year jurisdictional window before the CFC selectively ignores the *second primary purpose of the Bill*: clearing title to 2.6 million acres of land. In fact, the Tribe surely can think of 2.6 million principled reasons for supporting H.R. 396 and they are precisely the same as the reasons that H.R. 791 enjoyed broad support as a common sense and fair legislation. The problem addressed by H.R. 396 is not hypothetical, as DOJ suggests. Rather, H.R. 396 is a distinct solution to an existing, concrete problem.

Perhaps the most significant substantive issue that must be addressed in the DOJ's submission are the facts concerning previous tribal settlements. The DOJ states that the Tribe settled its claim to 2.6 million acres of treaty-protected land that the United States sold without valid title when it settled an entirely separate lawsuit against the United States for failing to fulfill fiduciary obligations related to Tribal trust assets that the United States controlled. Nothing in the parties filings in the Tribe's prior case before the CFC could possibly be construed as including the Tribe's treaty claims.<sup>4</sup> DOJ's suggestion that a settlement resolving the mismanagement of trust assets under U.S. control somehow embraces the Tribe's current claim to lands that the U.S. guaranteed under Article IV of the Grouseland Treaty, acquired in violation of that treaty, and sold to others is a disingenuous red herring. As the settlement agreement (that the DOJ quotes in its testimony) makes clear, the settlement cannot touch the Tribe's treaty-based claim because no monetary or non-monetary assets related to the Tribe's treaty-protected lands were in any way controlled by the U.S. for the Tribe's benefit. The Tribe cannot fathom a principled basis for the DOJ's mischaracterization of that settlement before this Subcommittee, except perhaps the reality that no court would entertain it. This Subcommittee should not either.

It is not surprising that the prospective defendant, United States, would elevate the age of the claim over the equitable remedy that H.R. 396 affords the Tribe and the residents of Illinois. This is precisely the kind of prejudgment that the supporters of H.R. 791 counseled Congress

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<sup>4</sup> See Compl., *Miami Tribe of Oklahoma v. United States*, Civ. No. 1:08-cv-00104 CFL, Dkt. No. 8 at 12-14 (May 30, 2008); Answer, Civ. No. 1:08-cv-00104 CFL, Dkt. No. 12 at 8-9 (July 29, 2008); Jt. Prelim. S., Civ. No. 1:08-cv-00104 CFL, Dkt. No. 14 at 2-3 (Sept. 19, 2008) ("Plaintiff broadly alleged that Defendant has breached its fiduciary duties in administering Plaintiff's trust funds...").

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against. The Tribe now echoes that prior counsel, which cautioned that the complex issues underlying this claim “can and should be made by experts”<sup>5</sup> and that the legislation simply sought to “place...accountability where it belongs, with the Federal Government.” That view is as true today as it was in the 107<sup>th</sup> Congress.

Thank you for the opportunity to address this testimony with the Subcommittee. I urge you to support H.R. 396 as an effective, fair, bilateral legislative solution to the Tribe’s claim.

Sincerely,

  
Douglas G. Lankford, Chief

cc. Hon Raúl M. Grijalva  
Hon. Col. Paul Cook  
Hon. Markwayne Mullin  
Hon. Donald E. Young  
Hon. Thomas J. Cole  
Chris Kaumo  
Ariana Romeo

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<sup>5</sup> Leg. Hr’g on H.R. 791, at 79 (prepared statement of Congressman J. Dennis Hastert, Speaker of the U.S. House of Representatives); *see also, id.*, at 7 (prepared statement of Congressman David Phelps) (“[T]his is not about who is right and who is wrong, the Miami Tribe or the landowners. This is a question of who is going to take responsibility”).