

09-585 NOV 10 2009

No. \_\_\_\_\_ OFFICE OF THE CLERK

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In The  
**Supreme Court of the United States**

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HARVEST INSTITUTE FREEDMAN FEDERATION,  
BLACK INDIANS UNITED LEGAL DEFENSE  
FUND AND WILLIAM WARRIOR,

*Petitioners,*

v.

UNITED STATES,

*Respondent.*

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*On Petition for Writ of Certiorari to the United  
States Court of Appeals for the Federal Circuit*

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**PETITION FOR WRIT OF CERTIORARI**

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November 10, 2009

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**QUESTION PRESENTED**

The claims in this action were brought on behalf of representatives of persons formerly held in bondage by the so-called "Five Civilized" Indian Tribes,<sup>1</sup> hereinafter "Freedmen." The Freedmen were beneficiaries of the various trusts established between the Five Civilized Tribes and the United States by 1866 treaties, which were later modified by further allotments in 1902. The question presented is whether the United States Court of Appeals for the Federal Circuit erroneously affirmed dismissal under 28 U.S.C. §2501 of Petitioners' claims without addressing in any manner whatsoever Petitioners' Repudiation Rule argument that the statute of limitations does not begin to run on claims by a trust beneficiary like Petitioners', against a trustee, here the United States, to enforce the terms of a trust until, the trustee repudiates the trust relationship, something that to date the United States has not done.

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<sup>1</sup> The Five Civilized Tribes were Seminole, Cherokee, Creek, Choctaw and Chickasaw, all of which allied themselves with the Confederacy during the Civil War and attempted to maintain slaves following the War.

**PARTIES**

Petitioners are the Harvest Institute Freedman Federation, William Warrior and Black Indians United Legal Defense and Educational Fund.

This action was brought under the provisions of Title 28 United States Code Sections, 1491 and 1505, to compel the United States as trustee to perform duties owed to Petitioners in their capacity as beneficiaries of certain Indian treaties and express agreements between the United States and various Indian tribes, and 28 U.S.C. §1507. Petitioner, Harvest Institute Freedman Federation Institute (hereinafter the "Institute"), is an organization formed to pursue legal redress and to vindicate the civil and property rights of the descendants of former slaves of both African and Indian ancestry, held in bondage by Indian tribes located within the United States prior to 1866 commonly referred to as Freedman or in some instances Black Indians. The Institute is comprised of the individual Freedmen members of the so called Five Civilized Tribes, Seminole, Creek, Choctaw, Chickasaw and Cherokee. The Institute's members, but for their lack of resources and in some instances education, otherwise have the requisite personal stake in the outcome of this action to sue in their own right, the interests the Institute seeks to protect are germane to its purpose and neither the claims asserted herein nor the relief requested requires the participation of individual Freedmen. Petitioner William Warrior is a descendant of such Freedmen and a representative of the entire class of such persons, a class too numerous to list individually as Petitioners in this action. Specifically, Petitioner Warrior is a lineal descendant of Chief John Horse's Band of Ethnic

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Seminole Nation Citizens. Petitioner Black Indian United Legal Defense and Education Fund (hereinafter the "Fund") is an organization formed to provide structural educational and policy guidance to the descendants of Freedmen concerning their status in relation to Native Americans, the States and the United States. Petitioners have suffered an injury that is concrete and particular, actual, directly traceable to the actions of defendants or their predecessors and capable of redress here by a favorable decision.

Respondent is the United States Department of the Interior, the federal agency with jurisdiction over the Bureau of Indian Affairs (BIA). BIA has responsibility for the administration and management of all land held in trust by the United States for American Indians, Indian tribes at Alaskan Nations.

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**PETITION FOR A WRIT OF CERTIORARI**

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Petitioner respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Federal Circuit in this case.

**OPINIONS BELOW**

January 15, 2008 Opinion of United States Court of Federal Claims granting Respondent's Motion to Dismiss. 80 Fed. Cl. 197.

May 14, 2009 Opinion of United States Court of Appeals for the Federal Circuit affirming trial court.

August 12, 2009 Order of United States Court of Appeals for the Federal Circuit denying rehearing.

**JURISDICTION**

The judgment of the Court of Appeals for the Federal Circuit affirming the Federal Court of Claims was entered May 14, 2009. Petitioners' Motion for Rehearing was denied on August 12, 2009. The jurisdiction of this Court is based on 28 U.S.C. §1254.

**CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

The relevant statutory provisions involved in this case, 28 U.S.C. § 1491, 28 U.S.C. § 1505, 28 U.S.C. § 1507, 28 U.S.C. § 2501, 14 Stat. 755, 30 Stat. 567, 14 Stat. 785, 14 Stat. 769, 30 Stat. 496 and 32 Stat. 641, reproduced in Appendix E.

**STATEMENT OF THE CASE**

This is an appeal from a decision of the United States Court of Appeals for the Federal Circuit that affirmed the trial Court's grant of the motion of the United States to dismiss. The claims in this action were brought by persons seeking monetary relief for the breach of post Civil War treaties between the United States and the Five Civilized Tribes, the Seminole, Cherokee, Creek, Choctaw and Chickasaw Indians.

The action was commenced by the filing of a Complaint which in response to an initial motion to dismiss was amended. The Amended Complaint, contained class allegations, and sought relief on behalf of the Petitioner beneficiaries of the proceeds of the trusts established under treaties between the United States and the Five Civilized Tribes. The United States moved to dismiss the claim as being barred by the six year statute of limitations applicable to claims before the Federal Court of Claims.

The motion to dismiss was granted and affirmed by the Federal Circuit. Petitioners now respectfully seek review of the decision affirming the dismissal.

**A. STATEMENT OF THE FACTS**

This action was commenced under the provisions of Title 28 United States Code Sections, 1491 and 1505, to compel the United States as trustee to perform duties owed to Petitioners in their capacity as beneficiaries of certain Indian treaties and express agreements between the United States and various Indian tribes, and 28 U.S.C. §1507. Petitioner,

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Harvest Institute Freedman Federation Institute (hereinafter the "Institute"), is an organization formed to pursue legal redress and to vindicate the civil and property rights of the descendants of former slaves of both African and Indian ancestry, held in bondage by Indian tribes located within the United States prior to 1866 commonly referred to as Freedman or in some instances Black Indians. Id. The Institute is comprised of the individual Freedmen members of the so called Five Civilized Tribes, Seminole, Creek, Choctaw, Chickasaw and Cherokee. The Institute's members, but for their lack of resources and in some instances education, otherwise have the requisite personal stake in the outcome of this action to sue in their own right, the interests the Institute seeks to protect are germane to its purpose and neither the claims asserted herein nor the relief requested requires the participation of individual Freedmen. Id. Petitioner William Warrior is a descendant of such Freedmen and a representative of the entire class of such persons, a class too numerous to list individually as Petitioners in this action. Specifically, Petitioner Warrior is a lineal descendant of Chief John Horse's Band of Ethnic Seminole Nation Citizens. Id. Petitioner Black Indian United Legal Defense and Education Fund (hereinafter the "Fund") is an organization formed to provide structural educational and policy guidance to the descendants of Freedmen concerning their status in relation to Native Americans, the States and the United States. Petitioners have suffered an injury that is concrete and particular, actual, directly traceable to the actions of Respondent or their predecessors and capable of redress here by a favorable decision. Id.

Respondent is the United States

The underlying action was commenced to obtain relief by reason of Respondent's failure to perform duties imposed upon it by certain treaties between the United States and Indian tribes not loyal to the United States during the War Between the States, 1861-1865. These treaties required these five disloyal Native American tribes to abolish slavery within their respective territories and to, *inter alia*, convey land to the United States for subsequent allocation to Freedmen or to allocate land within the respective tribes territory directly to Black Indians previously held in bondage by the disloyal tribes. Notwithstanding the clear and unambiguous undertaking by the United States of full fiduciary responsibility to cause land and benefits to go to Black Indians, the United States either never conveyed land to the Black Indians as expressly required by the relevant treaties and agreements, failed to cause the tribes to convey land, or in cases where conveyances and related benefits were awarded, failed to provide the requisite assistance and counsel to the beneficiaries to prevent their exploitation by persons desiring to misappropriate the land by insidious means, which resulted in widespread economic injury to Petitioners.

The following statutes and treaties are relevant to the claims set forth within the Amended Complaint:

Seminole Indians:

Ratified Treaty, 14 Stat. 755 (March 21, 1868)

Ratified Agreement, 30 Stat. 567 (July 1, 1898)

Creek Indians:

Ratified Treaty, 14 Stat. 785 (June 14, 1866)

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Ratified Agreement, 30 Stat. 495, 514 (June 28, 1898)

Ratified Agreement, 31 Stat. 861 (March 1, 1901)

Cherokee Indians:

Ratified Treaty, 14 Stat. 799 (July 19, 1866)

25 Stat. 608 (March 3, 1883)

Choctaw & Chickasaw Indians:

Ratified Treaty, 14 Stat. 769 (April 28, 1866)

Ratified Agreement, 30 Stat. 495, 505 (June 26, 1898)

Ratified Agreement, 32 Stat. 641 (July 1, 1902)

Seminole Indians:

Ratified Agreement, 31 Stat. 250 (June 2, 1900)

Creek Indians:

Ratified Agreement, 32 Stat. 500 (June 30, 1902)

Cherokee Indians:

Ratified Agreement, 31 Stat. 848 (March 1, 1901)

Ratified Agreement, 32 Stat. 716 (July 1, 1902)

There are two denominated claims. The first seeks a declaration of the “rights and liabilities of the United States in relation to the Black Indians descendants bringing this action as to their entitlement to land allotments and related benefits under each of the treaties set forth above.

Second, the Amended Complaint asserted a damages claim for United States’ “failure to perform its duties under the aforementioned treaties” that give rise to “fiduciary” duties on the part of the United States. This claim speaks in terms of “breach of the

various treaties” and the Respondents’ “failure to perform its fiduciary duties.” Petitioners seek damages in an amount equal to the value of the land and related benefits denied to them.

The Amended Complaint alleges “a continuing duty to Petitioners, each of which gives rise to a separate cause of action” and that there have been “separate” and “daily” breaches of the duty since the “inception of the treaties sued upon.” The Amended Complaint generally alleges that the “treaties” obligated the Five Civilized Tribes<sup>2</sup> to either “convey land to the United States for subsequent allocation to Freedmen” or to “allocate land within the respective tribe’s territory directly to Black Indians previously held in bondage by the disloyal tribes.” The Amended Complaint describes the government’s duty as a “full fiduciary responsibility to cause land and benefits to go to Black Indians.”

The United States breached this duty because it: (a) “never conveyed land to the Black Indians as expressly required by the relevant treaties and agreements”; (b) “failed to cause the tribes to convey land”; or (c) “in cases where conveyances and related benefits were awarded, failed to provide the requisite assistance and counsel to the beneficiaries to prevent their exploitation by persons desiring to misappropriate the land by insidious means, which resulted in widespread economic injury to Plaintiffs.”

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<sup>2</sup> The Creek, Choctaw, Chickasaw, Cherokee, and Seminole.

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## **B. COURSE OF PROCEEDINGS**

Petitioners filed their original Complaint in the Federal Court of Claims on December 28, 2006. An Amended Complaint was filed on July 23, 2007. Respondent moved to dismiss the Complaint under 28 U.S.C. Å2501 as having been brought more than six years after the claims accrued. Following oral argument, on January 15, 2008 the Federal Court of Claims dismissed. Petitioner timely appealed the United States Court of Appeals for the Federal Circuit affirmed the dismissal without opinion on May 14, 2009. Petitioners' Motion for Rehearing was denied without opinion on August 12, 2009.

## **REASON FOR GRANTING THE PETITION**

The claims presented by Petitioners concern one of the most shameful and ongoing stains on the honor of Republic. One Hundred Fifty years following the end of involuntary servitude in the United States, a large and clearly cognizable group of American citizens, the Freedmen, continue to suffer the consequences of persistent and overt racial discrimination aided and abetted by the denial and inaction of the federal government. The lower court opinions that state the Freedmens' claim is barred by the statute of limitations, ignore clearly established precedents arising from trust jurisprudence and perpetuates the legacy of discrimination, exclusion ad exploitation that has flowed from historic nonfeasance of the federal government in relation to the Freedmen. The United States Supreme Court is the last hope for justice for these exploited individuals. Accordingly, certiorari should be granted and the civil justice system made

available to these citizens to finally redress their grievances.

During the Civil War, the Five Civilized Tribes entered into treaties with the Confederacy, severing their relations with the United States. In 1866, the United States made treaties with each of the Five Civilized Tribes, setting the terms on which the tribes would continue to exist within the United States. All of the treaties with the Five Civilized Tribes eradicated slavery within the tribes and provided that the emancipated "Freedmen" would have certain rights within the tribes. Although these Treaties had a common purpose, the provisions of the various Treaties were not identical. The following is a summary of the provisions of the treaties pertinent to this appeal.

**The Seminole Treaty:** The United States entered into its first antebellum treaty with the Seminole in 1866. 14 Stat. 755. The treaty provided that the Freedmen members would have rights equal to those of Seminoles by blood:

And inasmuch as there are among the Seminoles many persons of African descent and blood, who have no interest or property in the soil, and no recognized civil rights, it is stipulated that hereafter these persons and their descendants, and such other of the same race as shall be permitted by said nation to settle there, shall have and enjoy all the rights of native citizens, and the laws of said nation shall be equally binding upon all persons of whatever race or color who may be adopted as citizens or members of said tribe.

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14 Stat. 755, 756. In 1898, the Seminole entered into an agreement with the United States to allot its land held in common to individual members. 30 Stat. 567. The agreement made no distinction between the Freedmen members and the members by blood. All Freedmen members, those represented by the Petitioners here, did not receive allotments under this agreement.

**The Creek Treaty:** The United States' treaty with the Creek is similar to its treaty with the Seminole. It provided that the Creek Freedmen would have all the rights of members by blood, including the right to share equally in land and funds:

[A]nd inasmuch as there are among the Creeks many persons of African descent, who have no interest in the soil, it is stipulated that hereafter those persons lawfully residing in said Creek country under their laws and usages...shall have and enjoy all the rights and privileges of native citizens, including an equal interest in the soil and national funds, and the laws of said nation shall be equally binding upon and give equal protection to all such persons, and all others, of whatever race or color, who may be adopted as citizens or members of said tribe.

14 Stat. 785, 786. In 1897, the United States and the Creek Nation agreed to terms on which the Creek Nation's common lands would be allotted. 30 Stat. 496, 514. The agreement made no distinction between Creeks by blood and the Freedmen. In 1901, the Creek entered a second agreement with the United States. 31 Stat. 861. Like the first, this agreement made no

distinction between Creek Indian and Freedmen members. The Creek Freedmen represented by Petitioners here did not receive their allotments on the same terms as the Creek members by blood.

**The Cherokee Agreement:** The United States entered into a treaty with the Cherokee in 1866. The treaty of 1866, *inter alia* is a basis for Petitioners' claims here. A treaty with the Cherokee Tribe and the United States was concluded on July 19, 1866. Article IV of that Treaty provided that "...[a]ll of the Cherokee freed Negroes who were formerly slaves to any Cherokee, and all free Negroes not having been slaves, who resided in the Cherokee nation prior to June 1, 1861...shall have the right to settle in and occupy the Canadian district...and will include a quantity of land equal to 160 acres for each person who may so elect to reside in the territory..." Thus, as in the case of the Choctaw and Chickasaw Freedmen, the Cherokee Freedmen were "adopted into the tribe [and] [c]onsequently, they and their descendants were entitled to participate in the allotment of lands equally with members of the tribe by blood." Ross v. Ickes, 130 F.2d 415 (D.C.C. 1942). It is in the failure of the Cherokee to allot land to the Freedmen represented by the Petitioners in this action that gives rise to this Complaint.

**The Choctaw and Chickasaw Treaty:** The United States entered into a treaty with the Choctaw and Chickasaw Tribes on April 28, 1866. 14 Stat. 769. This treaty provided that the tribes had a choice about how to deal with their Freedmen. If the tribes made their Freedmen members within two years, the tribes would receive a portion of a trust fund, and the Freedmen would receive 40-acre allotments once the

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Choctaw, Chickasaw and Kansas Indians had made their selections. If the tribes did not adopt their Freedmen and the Freedmen voluntarily removed themselves to other land within Indian Territory, the tribes would get nothing and the [Freedmen would receive a portion of the trust fund. *Id*] The Choctaw and Chickasaw resisted adopting the Freedmen, so the Freedmen were not entitled to the 40-acre allotments. In 1883, the Choctaw adopted the Freedmen into the tribe and declared each was entitled to 40 acres. The tribe made no allotments at that time either. Choctaw Nation of Indians v. United States, 318 U.S. 423, 425 (1943). The Chickasaw never did adopt their Freedmen into the tribe.

In 1897, the United States entered into an agreement with the Choctaw and Chickasaw whereby their lands held in common would be allotted. 30 Stat. 496, 505-506. This agreement provided that the Choctaw Freedmen would receive 40-acre allotments. 30 Stat. 506. Before any allotments were made, the United States entered into another agreement with the tribes. This second agreement also provided that Choctaw and Chickasaw Freedmen would receive 40 acres. 32 Stat. 641.

While the Choctaw and Chickasaw treaty provided conditional property rights, none of the other treaties entitled the Freedmen to individual property rights. The Freedmen represented by Petitioners here did not receive allotments under their tribes' allotment agreements with the United States at the turn of the 20<sup>th</sup> century.

**A. THE LOWER COURTS FAILED TO ADDRESS THE REPUDIATION RULE ARGUMENT**

There is a general “repudiation rule” with regards to equitable trusts that says the statute of limitations will not begin to run on claims to enforce a trust against a trustee until repudiation of the trust relationship. The underlying rationale is that the trustee’s possession of trust assets is presumed to be possession for the beneficiary (i.e. the cestui que trust), and the time should begin to run on claims against the trustee only when the trustee has taken some acts or communicated in a way that is inconsistent with that presumption, so as to provide notice that the trustee has disavowed the trust relationship or is no longer acting in the interests of the beneficiary. The repudiation rule is applicable here for the reason the Freedmen are seeking recovery of trust property itself, and the Government has not already repudiated its trust relationship with the Freedmen more than six years before the lawsuit was commenced.

The repudiation rule has appeared in cases involving Native American trust claims. For example, the Court of Appeals for the Federal Circuit affirmed the Claims Court’s dismissal of the Tunica-Biloxi Tribe’s claims on the basis of statute of limitations in Tunica-Biloxi Tribe v. United States, 1991 U.S. App. LEXIS 10716 (Fed. Cir. May 17, 1991). The Tribe argued that the claims were saved by the repudiation rule, but the Court rejected that contention because the claims were for nonfeasance or malfeasance, as opposed to claims for “recovery of trust corpus.” *Id.* at \*3-4. It explained:

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The Tribe contends, however, that the statute of limitations does not bar its claim because it is based on breach by the government of a fiduciary obligation and, under the law of trusts, a cause of action for breach does not accrue until the trust is repudiated or terminated. Manchester Band of Pomo Indians, Inc. v. United States, 363 F. Supp. 1238, 1249 (N.D. Cal. 1973) (*citing* United States v. Taylor, 104 U.S. 216 (1881)). If we assume a trust relationship existed, the rule relied on by the Tribe is applicable to a claim for recovery of corpus under an express trust, *see, e.g.*, Hopland Band, 855 F.2d at 1578, which is not involved here. At best, the assertions of the Tribe are for nonfeasance or malfeasance of the government as trustee. The Tribe contends that the government “failed as trustee to protect the Tribe’s landholdings in Louisiana from being illegally possessed by third persons,” [Br. at 2] and “failed to instruct its land commissioners as to the modalities of aboriginal use and occupancy, the applicable Spanish law, and neglected to supervise and oversee the operations of the land commission” which “dispossessed the Tribe [sic] of almost all of its landholdings.” [Br. at 2-3]

In a malfeasance or nonfeasance case, the alleged breach giving rise to the cause of action can be sufficient to repudiate the trust and start the statute of limitations running. Jones v. United States, 9 Cl. Ct. 292, 295 (1985), *aff’d on other grounds*, 801 F.2d 1334 (Fed. Cir. 1986); *see also* Hopland Band, 855 F.2d at 1578. When the government allegedly breached its trust

obligations, causing the Tribe to be divested of substantially all of its land over a forty-year period prior to 1840, the claimed trust relationship was effectively repudiated. *Jones*, 801 F.2d at 1336. Accordingly, the Tribe's cause of action was not in any way tolled under trust concepts and the Claims Court's holding that the Tribe's complaint was time-barred under 28 U.S.C. § 2501 was not erroneous.

Similarly, in *Jones v. United States*, the Claims Court held that the repudiation rule could not be invoked as preserving claims for misfeasance or malfeasance, explaining:

This rule is not applicable where the claim is for damages arising from misfeasance or nonfeasance by the trustee, rather than for recovery of the trust corpus. For example, in *United States v. Taylor* the claim was for money held in trust for more than six years by the Secretary of the Treasury. The Court explained that the six year statute of limitations did not apply because the proceeds belonged to plaintiff, and the Secretary was under a ministerial duty to hand it over upon application: "The person entitled to the money could allow it to remain in the treasury for an indefinite period without losing his right to demand and receive it. It follows that if he was not required to demand it within six years, he was not required to sue for it within that time." 104 U.S. at 221. *Accord Russell*, 37 Ct. Cl. at 117-18; *Wayne*, 26 U.S. at 289-90. The theory of these cases appears to be that money which is conceded to be held in trust is not a debt. Since entitlement to the trust

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corpus is not in dispute, ownership need not be established by means of lawsuit to which the statute of limitations applies. Only when the trust is repudiated by the trustee, and entitlement to the corpus (or a portion thereof) is claimed adversely to the beneficiary, does the relationship change to that of debtor and creditor, and a lawsuit then becomes necessary to establish entitlement. At that point the statute of limitations begins to run. Taylor, 104 U.S. at 222; Russell, 37 Ct. Cl. at 118; Wayne, 26 Ct. Cl. at 289.

The suit here, for damages arising from misfeasance of the trustee, is fundamentally different from *Taylor*, *Russell* and *Wayne*. This is not a dispute as to entitlement to a trust corpus that defendant is holding adversely to plaintiffs. Here, the theory of recovery is based upon damages suffered because of defendant's mishandling of its trust responsibilities, an action akin to breach of contract, as to which the fact and extent of liability would normally be in dispute. G. Bogert, *The Law of Trusts and Trustees* §§ 861-880 (2d ed. 1984). The question is not whether defendant will give plaintiffs what belongs to them but whether it will be forced to indemnify them for losses suffered in dealings with a third party. Such claims are not covered by the rule expressed in *Taylor* or its progeny, and suit thereon must be brought within six years of defendant's breach of trust. Menominee, 726 F.2d at 721-22. In any case, defendant's gross and protracted failure to fulfill its fiduciary responsibility constituted an implicit repudiation of the trust relationship,

which should have put the beneficiary on notice that she might suffer damages.”

9 Cl. Ct. 292, 295-96 (1985) (footnotes omitted).

In Hopland Band of Pomo Indians v. United States, the Court of Appeals for the Federal Circuit held that plaintiffs’ claims arising out of an alleged improper conveyance of trust property in by 1967 were time barred because a statute passed by Congress had expressly terminated the trust for the plaintiffs almost 20 years before they filed suit in 1986, even though the Government later reaffirmed the trust. 855 F.2d 1573, 1578-79 (Fed. Cir. 1988).

Although the repudiation doctrine does not apply to claims that by their nature seek indemnification or reimbursement or damages for losses sustained by the Freedmen descendants as a result of mismanagement of trust assets, but where as here the claim is for the trust property itself, may be applied. Its utility is dependent on the precise nature of the relief sought. Here the Freedmen are seeking to recover trust property currently held by the Government, their claims to that property are preserved by the repudiation doctrine.

The repudiation rule has appeared in cases involving Native American trust claims.

The repudiation rule may be applied to claims that seek recovery of the assets themselves, such as land and monetary benefits. Here, the Freedmen are seeking to recover trust property currently held by the Government, their claims to that property is preserved by the repudiation doctrine. The Government has not

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expressly repudiated its trust relationship with the Freedmen, thus the statute of limitations has not run.

The lower court failed to address the Repudiation Rule argument at all in its opinion.<sup>3</sup>

### CONCLUSION

By reason of the lower courts' failure to address Petitioners Repudiation Rule based argument, the appellate court should be reversed and this matter remanded for discovery and trial on the merits.

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<sup>3</sup> "The general relationship between the United States and the Indian tribes is not comparable to a private trust relationship. 'When the source of substantive law intended and recognized only the general, or bare, trust relationship, fiduciary obligations applicable to private trustees are not imposed on the United States.' Rather, the general relationship between Indian tribes and defendant traditionally has been understood to be in the nature of a guardian-ward relationship. 'A guardianship is not a trust.' 'The duties of a trustee are more intensive than the duties of some other fiduciaries.' Furthermore, a guardian-ward relationship implies that, at some point, the ward will begin to take responsibility for handling its own affairs. By contrast, a private trust relationship is a static relationship, with all encompassing duties forever on the trustee." *Cherokee Nation of Oklahoma v. United States*, 21 Cl. Ct. 565, 573 (1990) (citations omitted).

November 10, 2009

Respectfully submitted,

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