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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

TARA JEAN AMBOH Plaintiff, v. DUCHESNE COUNTY, a political subdivision of the State of Utah, and DUCHESNE COUNTY ATTORNEY STEPHEN FOOTE, Defendants.	**DUCHESNE COUNTY ATTORNEY STEPHEN FOOTE'S MOTION TO DISMISS and/or MOTION FOR JUDGMENT ON THE PLEADINGS** Case No. 2:21-cv-00564 Judge Cecilia Romero **ORAL ARGUMENT NOT REQUESTED**

This case arises out of several misdemeanor charges filed against Plaintiff Tara Jeanne Amboh (*i.e.*, failure to stop at the command of a law enforcement officer, interference with an arresting officer, disorderly conduct and no insurance on a motor vehicle) by Roosevelt City Police Officer Charles Cox. These charges were the result of a traffic stop by Officer Cox of the vehicle being driven by Amboh. Officer Cox attempted to impound Amboh's vehicle for lack of insurance and the situation escalated to the point where Amboh fled the scene in another vehicle and was later arrested, charged and briefly incarcerated in the Duchesne County Jail. The entire incident occurred in Roosevelt City, Utah, and Amboh was subsequently convicted of the interference with an arresting officer and operating a vehicle without insurance charges. She has appealed that conviction to the Utah Court of Appeals, but the Appellate Court has yet to decide the appeal.

Amboh, who is proceeding *pro se*, claims to be a member of the Uinta Band of Indians and has sued Duchesne County and Duchesne County Attorney Stephen Foote. The State of Utah's Eighth Judicial District Court in and for Duchesne County ("Eighth District Court"), where Amboh's charges were filed and she was later convicted, is not named in the caption of the *Complaint*, but the Eighth District Court is included in the allegations contained in the *Complaint*.

MOTION and RELIEF REQUESTED

In her *Complaint*, Amboh alleges three causes of action and seeks both declaratory and injunctive relief as well as unspecified compensatory damages based upon the traffic stop, her subsequent arrest, criminal charges and eventual conviction. These *Causes of Action* are all essentially based upon Amboh's contention that she is an Indian and that the offenses for which

she was charged and convicted all occurred within Indian Country and that deprived the State of jurisdiction over her crimes thus she was prosecuted in violation of her federal constitutional rights and the *Indian Civil Rights Act.* But Roosevelt City, where Amboh's crimes were committed, is not Indian Country and the *Indian Civil Rights Act* only applies to tribal governments. As a State prosecutor, Duchesne County Attorney Foote enjoys absolute *Eleventh Amendment* and prosecutorial immunity with respect to all of Amboh's claims.

Although Amboh claims that Roosevelt City officers used excessive and/or unnecessary force during her arrest, Defendant Foote had nothing to do with the arrest; he merely prosecuted the case on behalf of the State of Utah. Amboh never filed a *Notice of Claim* under the *Governmental Immunity Act of Utah*, which derives the Court of subject matter jurisdiction over all of her state claims. Finally, Amboh seeks to enjoin the Defendants, including County Attorney Foote, from enforcing State laws against her and other tribal members; whereas she lacks standing to pursue such relief on behalf of others, she has not and cannot meet the stringent requirements for an injunction, and the relief she is asking for is foreclosed by the *Anti-Injunction Act*, the *Younger Doctrine* and/or the *Rooker-Feldman Doctrine.*

Wherefore, pursuant to *Federal Rules of Civil Procedure* 12(b)(1), 12(b)(6) and 12(c), Duchesne County Attorney Stephen Foote hereby moves to dismiss Amboh's *Complaint* with prejudice. Oral argument is not requested.

STANDARD OF REVIEW

A *Rule* 12(c) and a *Rule* 12(b)(6) motion are evaluated under the same legal standard: the Court accepts all of a plaintiff's well-pleaded allegations as true, views those allegations in the light most favorable to the non-moving party, and likewise affords the non-movant all

reasonable inferences that flow from those allegations.[1] But, the Court also considers written documents attached to the pleadings as well as matters of which it can take judicial notice and/or matters of public record.[2] A slightly different standard of review applies to a *Rule* 12(b)(1) motion challenging subject matter jurisdiction.[3]

When a party properly raises a factual question concerning subject matter jurisdiction, the court may look beyond the jurisdictional allegations contained in the pleadings and view whatever evidence has been submitted to determine whether in fact subject matter jurisdiction exists.[4] The plaintiff has the burden of proving jurisdiction in order to survive the motion";[5] and a motion to dismiss for lack of subject matter jurisdiction may go beyond the complaint and challenge the factual existence of subject matter jurisdiction.[6] Consequently, in deciding a challenge to subject matter jurisdiction, a district court is not bound to accept as true the allegations of the complaint as to jurisdiction.[7]

CONTROLLING LAW

County Attorney Foote submits that the most practical and efficient means of addressing the flaws in Amboh's *Complaint* is to focus on the broad, well established legal doctrines that apply to and preclude her claims rather than slog through the confusing and often nonsensical

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[1] *See See Park University Enterprises, Inc. v. American Cas. Co. Of Reading, PA*, 442 F.3d 1239, 1244 (10th Cir. 2006)*; Corder v. Lewis Palmer Sch. Dist. No. 38*, 566 F.3d 1219, 1223-24 (10th Cir. 2009).

[2] *See id. See also* Fed. R. Civ. P. 10(c) (Exhibits to a pleading are a part of the pleading for all purposes).

[3] *Grafon Corp. v. Hausermann*, 602 F.2d 781, 783 (7th Cir.1979).

[4] *Id. (*citing *Gibbs v. Buck*, 307 U.S. 66, 72 (1939)).

[5] *Moir v. Greater Cleveland Reg. Auth.*, 895 F.2d 266, 269 (6th Cir.1990) (citing *Rogers v. Stratton Industries, Inc.*, 798 F.2d 913, 915 (6th Cir.1986)).

[6] *Golden v. Gorno Bros., Inc.,* 410 F.3d 879, 881 (6th Cir. 2005).

[7] *See id.*

allegations of a *pro se* litigant. Those doctrines which, individually or collectively, dispose of Amboh's' claims against County Attorney Foote, are presented below:

A. Governmental Immunity:

The Governmental Immunity Act of Utah "*GIAU*" requires that with respect to claims asserted against a governmental entity and its employees the plaintiff must filed a *Notice of Claim*.[8] A timely *Notice of Claim* is necessary to vest the Court with subject matter jurisdiction, whereas the "failure to file such notice deprives the court of subject matter jurisdiction"[9] The filing of a *Notice of Claim* is also a prerequisite for bring suit on an alleged violation of rights under the Utah *Constitution*,[10] and once raised it is the plaintiff's burden to prove the existence of subject matter jurisdiction.[11]

The *GIAU* specifically provides that immunity has not been waived for claims arising out malicious prosecution.[12] A claim of malicious prosecution brought under § 1983 is governed by state law.[13] Furthermore, one element that must be alleged and proven in a malicious prosecution action is termination of the prior criminal proceeding in favor of the accused. This requirement avoids parallel litigation over the issues of probable cause and guilt, and it precludes the possibility of the claimant succeeding in the tort action after having been convicted in the underlying criminal prosecution, in contravention of a strong judicial policy against the creation

[8] U.C.A. §§63G-7-401 and 63G-7-402.
[9] *Wallace v. Grey*, 2009 WL 249461 *9 (D. Utah Feb 2. 2009).
[10] *Jensen v. Reeves*, 3 Fed. Appx. 905, 911 (10th Cir. 2001) (unpublished).
[11] *See Salzer v. SSM Health Care of Oklahoma Inc.,* 762 F.3d 1130, 1134 (10th Cir. 2014) ("The party invoking federal jurisdiction has the burden to establish that it is proper, and there is a presumption against its existence.")(cleaned up).
[12] U.C.A. §63G7-7-201(4)(b).
[13] *Russell v. Smith*, 68 F.3d 33, 36 (2nd Cir. 1995).

of two conflicting resolutions arising out of the same or identical transaction.[14] Immunity is also not waived for claims arising out of assault, battery, and/or false arrest.[15]

B. Eleventh Amendment Immunity:

The Utah *Constitution* provides for the creation of County Attorneys as officers of the State of Utah for the purpose of prosecuting offenses against the laws of the State of Utah.[16] In the prosecution of Amboh and all matters related thereto, Stephen Foote was acting on behalf of the State of Utah.[17] As a prosecutor for the State of Utah, Foote enjoys *Eleventh Amendment* immunity,[18] which is fatal to all of Amboh's claims directed at him.[19] The *Eleventh Amendment* acts as a jurisdictional bar to suits against states and/or their officials in federal court, and applies whether the relief sought is legal or equitable.[20]

C. Prosecutorial Immunity:

State prosecutors are entitled to absolute immunity for activities "'**intimately associated with the judicial ... process**,'" such as initiating and pursuing criminal

[14] *Heck v. Humphrey*, 512 U.S. 477, 484 (1994).
[15] *See* U.C.A. §63G-7-201(4)(b).
[16] *See Utah Const. Art.* 8, §16.
[17] The Utah *Constitution* provides for the creation of County Attorneys or District Attorneys as officers of the State of Utah for the purpose of prosecuting offenses against the law of the State of Utah. Utah *Constitution* Art. 8, §16. *See also* U.C.A. §17-18a-401("An attorney who serves as a public prosecutor shall . . . conduct on behalf of the state all prosecutions for a public offense committee within a county or prosecution district").
[18] *See Arnold v. McCline*, 926 F. 2d 963(10th Cir. 1991); *Rozek v. Topolnicki*, 865 F.2d 1154, 1158 (10th Cir. 1158).
[19] *See Inray v. Secretary of Department of Crime Control and Public Safety*, 7 F.3d 1140, 1149 (4th Cir. 1993)(This immunity also extends to civil rights actions brought against the state or state officials).
[20] *Johns v. Stewart*, 57 F.3d 1544, 1552 (10th Cir. 1995).

prosecutions.[21] Of course, all actions of a prosecutor are not absolutely immune merely because they are performed by a prosecutor.[22] But, even if a prosecutor's actions do not fall within the scope of absolute immunity, he or she would still be entitled to *qualified immunity*.[23]

The Tenth Circuit applies a continuum-based approach to determining whether a prosecutor is entitled to absolute immunity or *qualified immunity* in a particular situation, stating that "the more distant a function is from the judicial process and the initiation and presentation of the state's case, the less likely it is that absolute immunity will attach."[24] Simply stated, prosecutors have absolute immunity from suit for any and all conduct that is "intimately associated with the judicial phase of the criminal process,"[25] and for any actions taken in their role as advocates, including immunity from civil rights claims and common-law torts.

D. <u>Qualified Immunity</u>:

County Attorney Stephen Foote has asserted *qualified immunity* as an affirmative defense. By asserting the *qualified immunity* defense, Foote creates a rebuttable presumption that he is immune from Amboh's §1983 claims.[26] The doctrine of *qualified immunity* protects government officials like County Attorney Foote "from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a

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[21] *Pfeiffer v. Hartford Fire Ins. Co.,* 929 F.2d 1484, 1489 (10th Cir. 1991)(emphasis added) (quoting *Imbler,* 424 U.S. at 430–31).
[22] *DiCesare v. Stuart,* 12 F.3d 973, 977 (10th Cir.1993).
[23] *See Pfeiffer,* 929 F.2d at 1490 & n. 6). *Accord Lavicky v. Burnett,* 758 F.2d 468, 476 (10th Cir.1985).
[24] *Gagan v. Norton*, 35 F.3d 1473, 1475–76 (10th Cir. 1994); *Pfeiffer,* 929 F.2d at 1490.
[25] *Van de Kamp v. Goldstein,* 555 U.S. 335, 343 (2009) and *Botello v. Gammick,* 413 F.3d 971, 975 (9th Cir. 2005).
[26] *See Medina v. Cram*, 252 F.3d 1124, 1129 (10th Cir. 2001).

reasonable person would have known."[27] *Qualified immunity* balances two important interests: the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably.

The protection of *qualified immunity* applies even if the government official's error was "a mistake of law, a mistake of fact, or a mistake based on mixed questions of law and fact."[28] This is known as the "objective reasonableness test," and it is met if officials of reasonable competency could disagree on the legality of the defendant's actions.[29] In other words, the defense of *qualified immunity* exists when the officer's actions were objectively reasonable in light of what he or she knew at the time of the alleged civil rights violation,[30] and an officer does not lose his or her *qualified immunity* merely because their conduct violates some state statute, department policy, or administrative provision.[31]

E. <u>Collateral Estoppel-Res Judicata</u>:

When a plaintiff seeks damages in a § 1983 suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his or her conviction. If it would, the complaint must be dismissed, unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated.[32] Therefore, a § 1983 suit is not

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[27] *Harlow v. Fitzgerald*, 457 U.S. 800. 818 (1982).
[28] *Pearson,* 555 U.S. at 231 (citation omitted).
[29] *See Thomas v. Roach*, 165 F.3d 137, 143 (2nd Cir. 1999).
[30] *See Al-Turki v. Robinson,* 762 F.3d 1188, 1194 (10th Cir. 2014) (In determining a defendant's entitlement to *qualified immunity*, the pertinent question is what he or she knew at the time of the alleged civil rights violation); *Mays v. Rhodes,* 255 F.3d 644, 649 (8th Cir. 2001) (same).
[31] *Davis v. Sherer,* 468 U.S. 183, 194-95 (1984). *See also Smith v. Freland*, 954 F.2d 343, 347 (6th Cir. 1992).
[32] *See Heck v. Humphrey*, 512 U.S. 477, 487 (1994).

cognizable until a plaintiff proves that the underlying conviction or sentence has been cleared away.[33] In addition, there is also the matter of issue preclusion with respect to Roosevelt City's alleged status as being within "Indian Country" for purposes of State and local jurisdiction over members of the Ute Tribe and other Indians.

Issue preclusion applies when the following four elements are satisfied: (1) the party against whom issue preclusion is asserted was a party to or in privity with a party to the prior adjudication; (2) the issue decided in the prior adjudication was identical to the one presented in the instant action; (3) the issue in the first action was completely, fully, and fairly litigated; and (4) the first suit resulted in a final judgment on the merits.[34] In this case, the Ute Tribe brought an action on behalf of its members, including Amboh, to determine, among other things, Roosevelt City's land status for purposes of the State's jurisdiction over its members for offenses committed within the City. That lawsuit resulted in rulings by the United States District Court for the District of Utah and the Tenth Circuit Court of Appeals that Roosevelt City was not Indian Country and, as a consequence, the State had/has the jurisdiction to prosecute members of the Ute Tribe and other Indians for offenses committed by them within Roosevelt City.

F. <u>Anti-Injunction Act</u>:

The *Anti-Injunction Act* provides that: "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by an Act of

[33] *See Turner v. Middle Rio Grande Conservancy District*, 757 Fed.Appx. 715, 719 (10th Cir. 2018)(unpublished).
[34] *Fowler v. Teynor*, 323 P.3d 594, 597, 2014 UT App 66, ¶ 10 (Utah App., 2014).

Congress, or where necessary in aid of its jurisdiction or to protect or effectuate its judgments."[35]

G. Younger Doctrine:

The *Younger Abstention Doctrine* provides that "[a]bsent unusual circumstances, a federal court is not permitted to intervene in ongoing state criminal proceedings" when adequate state relief is available,[36] and adequate relief is available to Amboh via the Utah State Courts. Moreover, abstention is mandatory if (1) there is an ongoing state criminal or civil proceeding; (2) "the state court provides an adequate forum to hear the claims raised in the federal complaint;" and (3) "the state proceedings involve important state interests, matters which traditionally look to state law for their resolution or implicate separately articulated state policies."[37] Furthermore the *Younger Doctrine* does not apply when, as in this case, there is no on-going violation of federal law.[38]

H. Rooker-Feldman Doctrine:

The *Rooker–Feldman Doctrine* is a jurisdictional prohibition on lower federal courts exercising appellate jurisdiction over state-court judgments.[39] Simply stated: *Rooker-Feldman* prohibits, on the basis of a lack of subject matter jurisdiction, a federal action that tries to modify

[35] 28 U.S.C. § 2283.
[36] *Walck v. Edmondson*, 472 F.3d 1227, 1232 (10th Cir. 2007)(citing *Younger v. Harris*, 404 U.S. 37, 54 (1971)).
[37] *Id.* at 1233 (citations and quotations omitted). *See also Poulson v. Turner*, 359 F.2d 588, 591 (10th Cir. 1966)(Under federalism, the administration of criminal justice is generally committed to the states).
[38] *See Johns v. Stewart*, 57 F.3d 1544, 1552 (10th Cir. 1995).
[39] *Campbell v. City of Spencer*, 682 F.3d 1278, 1281 (10th Cir. 2012).

or set aside a state-court judgment because the state proceedings should not have led to that judgment.[40]

I. Standing:

To have standing to pursue a claim for relief, "[a] plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief."[41] And the district court must generally resolve material factual disputes and determine the question of standing, before deciding a case on the merits.[42] The burden of demonstrating standing falls to the party invoking federal jurisdiction.[43] In addition, because standing is a matter of the district court's subject matter jurisdiction, the court may resort to material outside the pleadings in passing on a motion under *Rule* 12(b)(1).[44] Moreover, in determining whether subject matter jurisdiction is proper, the Court must weigh the merits of what is presented by the parties.[45]

Closely aligned with standing is the *public duty doctrine*. Under § 1983, a plaintiff must make out a claim that the defendant violated a right secured to him or her under the United States *Constitution*.[46] Under the *public duty doctrine*, a general duty owed to the public will not suffice.[47] A plaintiff such as Amboh, therefore, cannot sue based on "a generalized grievance

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[40] *See Exxon Mobil,* 544 U.S. 280, (2005)(cases governed by *Rooker-Feldman* involved complaints "seeking review and rejection of [a state-court] judgment").
[41] *See Allen v. Wright*, 468 U.S. 737, 751(1984).
[42] *See Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 101(1998).
[43] *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561(1992).
[44] *Mims v. Kemp*, 516 F.2d 21, 23 (4th Cir.1975).
[45] *Anderson v. U.S.*, 245 F.Supp.2d 1217, 1222 (M.D. Fla.,2002).
[46] *Siegert v. Gilley*, 500 U.S. 226 (1991).
[47] *See Burcher v. McCauley,* 871 F.Supp. 864, 867–68 (E.D. Va.,1994).

against [assertedly] illegal government conduct[.]"[48] The rule against generalized grievances applies with as much force in a civil rights context as in any other.[49]

A § 1983 plaintiff is only entitled to injunctive relief if he has a personal stake in the outcome of the litigation.[50] The plaintiff must show that he or she "has sustained or is immediately in danger of sustaining some direct injury" as a result of the challenged official conduct and the injury or threat of injury must be both "real and immediate," not "conjectural" or "hypothetical."[51] Evidence of past wrongs alone are insufficient,[52] and a plaintiff has no standing to seek injunctive relief on behalf of others similarly situated.[53]

J. <u>Pleading Requirements</u>:

The *Federal Rules of Civil Procedure* require a pleading to contain a "short and plain statement of the claim showing that the pleader is entitled to relief."[54] A plaintiff is required "to place the defendant on notice as to the type of claim alleged and ground upon which it rests.[55] Thus, to state a proper claim the plaintiff must "make clear exactly who is alleged to have done what to whom. . . ,"[56] and this is especially true in alleging a civil rights violation where each

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[48] *United States v. Hays*, 515 U.S. 737, 743, 115 (1995).
[49] *See id.* at 743–44 (recognizing that the injury from discrimination relates to the person actually denied equal treatment).
[50] *Stewart v. McGinnis*, 5 F.3d 1031, 1037 (7th Cir.1993) (citations omitted).
[51] *City of Los Angeles v. Lyons*, 461 U.S. 95, 101-102(1983).
[52] *Id.* at 102.
[53] *See Trotter v. Klincar*, 566 F.Supp. 1059, 1062–63 (N.D. Ill.1983), aff'd 748 F.2d 1177 (7th Cir.1984).
[54] *Fed. R. Civ. P.* 8.
[55] *Mountain View Pharmacy v. Abbott Lab'ys.,* 630 F.2d 1383, 1388(10th Cir. 1980).
[56] *Robbins v. Oklahoma*, 519 F.3d 1242, 1250 (10th Cir. 2008).

defendants' personal participation must be alleged since it is an essential element of a civil rights claim.[57]

A claim must likewise be "plausible," which means that a plaintiff must allege facts that support the claim, and not "labels and conclusions" or "a formulaic recitation of the elements of a cause of action."[58] Neither will "threadbare recitals of the elements of a cause of action supported by merely conclusory statements" suffice to state a claim for relief.[59] And in a civil rights action, with respect to each defendant the plaintiff must allege sufficient facts to show that he or she plausibly violated the plaintiff's civil rights and that the particular right allegedly violated was clearly established and that, at a minimum, requires a plaintiff to allege sufficient facts to give each defendant notice of the theory for each claim,[60] which Amboh has not done.

A *pro se* plaintiff's pleadings and other court filings are held to "less stringent standards than formal pleadings."[61] But, this does not allow *pro se* litigants to run roughshod over the rules of procedure and the rights of opposing parties. Thus, while courts liberally construe *pro se* pleadings, a litigant's *pro se* status does not excuse their obligation to comply with the fundamental requirements of the *Federal Rules of Civil Procedure* or the *Federal Rules of Appellate Procedure*.[62]

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[57] *See Bennett v. Passic*, 545 F.2d 1260, 1262-63(10th Cir. 1976).
[58] *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 444 (2007).
[59] *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009).
[60] *See Robbins*, 519 F.2d at 1249.
[61] *Haines v. Kerner, et al.*, 404 U.S. 519, 520 (1972). *See also Gillihan v. Shillinger et al.*, 872 F.2d 935, 938 (10th Cir. 1989) (construing *pro se* pleadings liberally and holding their pleadings to less stringent standards).
[62] *Ogden v. San Juan County, et al.*, 32 F.3d 452, 455 (10th Cir. 1994). *See also Nielsen v. Price*, 17 F.3d 1276, 1277 (10th Cir. 1994) (*pro se* parties must comply with same procedural rules that govern all other litigants). Accord, *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991)(It is not the proper function of the court to assume the role of advocate for the *pro se* litigant).

STATEMENT OF UNDISPUTED FACTS

The undisputed facts entitling County Attorney Foote to a judgment of dismissal are taken from Amboh's *Complaint* and/or public record material. In reviewing these facts, it is important to note that Amboh is attempting to perpetrate a *fraud-upon-the-court* for which she should be sanctioned.

1. In 1975 the Ute Tribe commenced on behalf of all of its members, a lawsuit in the United States District Court for the District of Utah, to determine the boundaries of "Indian Country" for purposes of State and local jurisdiction over its members.[63]

2. The Defendants in that case included Roosevelt City, Utah.[64]

3. On August 18, 1992, the parties in that case entered into a stipulation whereby State and local authorities would not enforce criminal laws against members of the Ute Tribe within the exterior borders of the Ute Reservation until the District Court defined the boundaries of Indian Country land within the reservation.[65]

4. That *Stipulation* resulted in a preliminary injunction that prohibited the State of Utah from enforcing its criminal laws against members of the Ute Tribe within the exterior boundaries of Ute Reservation until the District Court ruled on and/or established the boundaries of Indian Country land within the Reservation's exterior boundaries.[66]

5. On September 15, 1997, the District Court vacated that injunction with respect to

[63] *See Ute Indian Tribe v. Duchesne County et. al.*, 75-cv-708 ECF 1.
[64] *Id.*
[65] *Id.* at ECF 7.
[66] *Id.*

the prosecution of Ute tribal members and other Indians for crimes committed within Roosevelt City.[67]

6. On October 3, 2014, the District Court entered an *Order* dismissing Roosevelt City from that lawsuit because the lands within the boundaries of Roosevelt City were not Indian County.[68]

7. The effect of those two *Orders* was to designate all of the land within exterior boundaries of Roosevelt City as non-Indian Country for purposes of State jurisdiction and authority over members of the Ute Tribe and other Indians.

8. The Ute Tribe never appealed from either of those *Orders*.[69]

9. On December 7, 2020, Amboh was stopped by Roosevelt City Police Officer Charles James Cox while driving a vehicle within the Roosevelt City limits.[70]

10. That stop resulted in Amboh being arrested and cited for operating a vehicle without insurance, failure to stop at the command of a law enforcement officer, and disorderly conduct in violation of, respectively, U.C.A. §§ 41-12A-302, 76-8-305.5 and 76-9-102.

11. Amboh was eventually formally charged with those offenses;[71] she was tried in the Eighth District Court; she was convicted of interference with an arresting officer and operating a vehicle without insurance; and she was sentenced accordingly.[72]

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[67] *See* ECF 68, a copy of which is attached hereto as Exhibit A.
[68] *See* ECF 726, a copy of which is attached hereto as Exhibit B.
[69] *See* Docket 75-cv-408.
[70] *See Affidavit of Probable Cause,* ECF 1-2 at pages 35-36; *Crime Report*, ECF 1-2 at pages 11 through 12; *Arrest Report*, ECF 1-2 at pages 8 through 9.
[71] *See Information*, ECF 1-2 at pages 4 through 5.
[72] *See Judgment of Conviction,* a copy of which is attached hereto as Exhibit C.

12. Amboh was represented by counsel in that case before the Eighth District Court, but prior to trial she filed her own *Motion to Dismiss* claiming in essence that the Roosevelt City was "Indian Country" and, therefore, the State of Utah had no jurisdiction.[73]

13. She attached to her *Motion* the 1992 *Stipulation* and *Order* (*i.e.*, 75-cv-408 at ECF 7) that enjoined the State of Utah from prosecuting members of the Ute Tribe,[74] and falsely represented to the Court that these documents precluded the State of Utah from having any jurisdiction over her.[75]

14. But Amboh concealed from the Eighth District Court the fact that the federal court had eventually ruled that the land within Roosevelt City was not Indian Country, and that the State of Utah was not divested of jurisdiction over crimes committed by Ute tribal members or other Indians.[76]

15. Despite Amboh's attempt to mislead the Eighth District Court, the real status of Roosevelt City as non-Indian Country came to light during the hearing on her *Motion to Dismiss*, which was denied by the Eighth District Court based upon the Tenth Circuit's decision related to the 1975 federal court case.[77]

16. Amboh has appealed her conviction to the Utah Court of Appeals,[78] and the Court of Appeals has docketed that appeal,[79] but a decision from the Court of Appeals has not yet issued.

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[73] *See Motion to Dismiss*, ECF 1-3 at pages 2 through 4.
[74] *See id.*
[75] *See id.*
[76] *See id.*
[77] *See Minutes*, Exhibit D hereto at page 2.
[78] *See Notice of Appeal*, Exhibit E hereto.
[79] *See Notice*, Exhibit F hereto.

17. On September 27, 2022, Amboh commenced the instant case against County Attorney Foote, Duchesne County and the Eighth District Court.[80]

18. Incredibly, in her *Complaint* Amboh again proffers the 1992 *Stipulation* and *Order* to the District Court to support her claim that Roosevelt City is Indian Country,[81] but she does not mention the fact that both this Court and the Tenth Circuit Court of Appeals have already conclusively determined that Roosevelt City is NOT Indian Country.

19. Amboh's *Complaint* consists of three nonsensical claims for money damages and other equitable or declaratory relief.[82]

20. The *First Cause of Action* is for the alleged violation of Amboh's federal civil rights under 42 U.S.C. §1983 and the *Indian Civil Rights Act* for which she is seeking both compensatory damages and an injunction to prevent future prosecutions for for violation of State laws. Her allegations against County Attorney Foote consist of the fact that he prosecuted the State's case against her,[83] with the essential theme of this claim being that the State of Utah lacked the jurisdiction to arrest, charge and prosecute her because Roosevelt City is Indian Country. Amboh does make allegations in this claim about the use of excessive force during her arrest, but there are no allegations of any involvement in either her arrest or the use of excessive force upon her by County Attorney Foote.

21. Her *Second Cause of Action* is likewise for the use of excessive and/or

[80] *See Complaint*, ECF 1.
[81] *See id.*
[82] *See id.*
[83] *See id.* at ¶8, pages 4 through 5.

unnecessary force against her during the arrest and appears to be a common-law assault, battery and/or false arrest claim for which immunity has not been waived by the State of Utah.[84]

22. The *Third Cause of Action* alleges, in conclusory fashion, racial discrimination and essentially seeks to enjoin Defendants from enforcing State and local laws against her and other tribal members. Again, with respect to such potential future prosecutions, Amboh does not allege any wrong done to her by County Attorney Foote and, under the *public duty doctrine*, she lacks standing to assert the rights of other Ute tribal members. Moreover, to the extent this and Amboh's other *Causes of Action* could be viewed as ones for common-law or unconstitutional malicious prosecution, they would be barred by her conviction and governmental immunity.

23. Amboh does not allege in her *Complaint* that she filed a *Notice of Claim* as required by the *GIAU* in order for her to pursue State common-law and/or State constitutional claims. Nor could Amboh make such an allegation because she did not file a *Notice of Claim.*[85]

ARGUMENT: DEFENDANT FOOTE DID NOT VIOLATE AMBOH'S FEDERAL CIVIL RIGHTS

The State of Utah clearly had the jurisdiction to charge, and try Amboh for her violations of State law occurring within the Roosevelt City limits. Therefore, County Attorney Foote's prosecution of the State's case against Amboh did not violate her federal constitutional rights. Neither did this prosecution violate any rights accorded to Amboh under the *Indian Civil Rights Act* because that law does not apply to the conduct of the State of Utah: it provides limited protections to individual Indians against abuses by tribal governments.[86]

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[84] U.C.A. § 63G-7-201(4)(b).
[85] *See Evans Declaration* attached hereto as Exhibit G.
[86] *See MacArthur v. San Juan Cnty.*, 391 F.Supp.2d 895, 1049 (D.Utah,2005).

ARGUMENT: DEFENDANT FOOTE ENJOYS ABSOLUTE IMMUNITY

Amboh is suing County Attorney Foote based upon actions allegedly taken by him as the person who prosecuted her on behalf of the State of Utah. As a State prosecutors, County Attorney Foote enjoys absolute immunity from all of Amboh's claims on the basis of both *Eleventh Amendment* immunity,[87] and prosecutorial immunity.[88]

ARGUMENT: DEFENDANT FOOTE ENJOYS QUALIFIED IMMUNITY

County Attorney Foote is likewise claiming *qualified immunity* as an affirmative defense. Hence, even if he does not enjoy absolute prosecutorial immunity or *Eleventh Amendment* immunity with respect to Amboh's civil rights claims, Foote would still be entitled to *qualified immunity* because his actions in the prosecution of Amboh were objectively reasonable.[89] In addition, the civil rights that County Attorney Foote is alleged to have violated, such as the denial of the protections accorded to her under the *Indian Civil Rights Act* or her prosecution for offenses committed in Roosevelt City, were not clearly established so as to otherwise deprive Foote of *qualified immunity*.[90]

ARGUMENT: AMBOH'S CLAIMS ARE BARRED BY THE GIAU

Because of her failure to file a *Notice of Claim*, Amboh's State claims, both common-law

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[87] *Johns v. Stewart*, 57 F.3d 1544, 1552 (10th Cir. 1995).
[88] *See Imbler v. Pachman*, 424 U.S. 409, 407 (1976); *Erickson v. Pawnee County Board of County Commissioners*, 263 F.3d 1151(10th Cir. 1991).
[89] *See Thomas v. Roach*, 165 F.3d 137, 143 (2d Cir. 1999).
[90] *Harlow v. Fitzgerald*, 457 U.S. 800. 818 (1982).

and state constitutional claims, are barred by the lack of subject matter jurisdiction.[91] Insofar as these common law claims arise out of an assault, battery, false arrest, and/or malicious prosecution they are also barred by governmental immunity, which has not been waived for these torts.[92]

ARGUMENT: THE DOCTRINES OF COLLATERAL ESTOPPEL/RES JUDICATA BAR CERTAIN CLAIMS

Amboh is clearly mounting an attack upon her prosecution and conviction in the Eighth District Court, including that Court's jurisdiction over her. These claims, therefore, are barred by the doctrines of collateral estoppel and/or res judicata based upon her conviction, which has not been set aside, reversed or vacated.[93] Amboh's assertion that the site of her criminal acts was within Indian Country so to have divested the State of jurisdiction is similarly foreclosed by the doctrine of issue preclusion because decades ago the Ute Tribe litigated on behalf of its members the land status of Roosevelt City for jurisdictional purposes, and the results of that litigation are that Roosevelt City is not Indian Country, and that Indians who commit offenses with the Roosevelt City limits are subject to being prosecuted by the State of Utah.

ARGUMENT: AMBOH IS NOT ENTITLED TO DECLARATORY OR INJUNCTIVE RELIEF

The focus of Amboh's *First* and *Third Causes of Action* is also directed at enjoining future prosecutions of her and other Ute Tribal members by the State of Utah, including enjoining current and future proceedings arising out of her convictions in the Eighth Judicial

[91] *See Wallace v. Grey*, 2009 WL 249461 *9 (D. Utah Feb 2. 2009); *Jensen v. Reeves*, 3 Fed.. Appx. 905, 911(10 th Cir. 2001)(unpublished).
[92] *See* U.C.A. §63G-7-201(4)(b).
[93] *See Turner v. Middle Rio Grande Conservancy District*, 757 Fed. Appx. 715, 719 (10th Cir. 2018)(unpublished).

District Court at issue in this case. These claims are essentially a collateral attack upon her conviction, and to enjoin the Eighth District Court from further proceedings in that case. Consequently, these claims are barred by the *Anti-Injunction Act*, which precludes this Court from enjoining a state court unless such injunctive relief is expressly authorized by an Act of Congress, or when necessary in aid of federal court jurisdiction or to protect or effectuate the Court's judgment."[94] And none of these exceptions to the proscriptions against enjoining state court proceedings apply in this case.

The *Younger Abstention Doctrine* also prohibits this Court from intervening in the Eighth District Court and Utah Court of Appeals proceedings because they are ongoing as evident by her appeal to the Utah Court of Appeals; because Utah courts provide an adequate forum to hear the claims raised by Amboh in her *Complaint*; and because these proceedings involve matters, such as traffic related offenses, which traditionally look to state law for resolution.[95] There is likewise the *Rooker–Feldman Doctrine,* which poses an insurmountable hurdle to Amboh's claim for injunctive relief. In this case, the *Rooker-Feldman Doctrine* raises a jurisdictional bar because what Amboh is attempting to accomplish with these particular claims is to have this Court review and/or set aside her Eighth District Court conviction, which it is precluded from doing under the facts in this case.[96]

[94] 28 U.S.C. § 2283.
[95] *Id.* at 1233 (citations and quotations omitted).
[96] *See Exxon Mobil,* 544 U.S. 280, (2005)(cases governed by *Rooker-Feldman* involved complaints "seeking review and rejection of [a state-court] judgment").

Lastly, "a preliminary injunction is an exercise of a very far-reaching power, never to be indulged in except in a case clearly demanding it."[97] An injunction will not be issued simply to prevent the possibility of some remote future injury since that would be inconsistent with the nature of injunctive relief, which is an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.[98] Consequently, in order to obtain such equitable relief a plaintiff must, at the threshold, demonstrate that: (1) without a preliminary injunction, he or she will suffer irreparable harm before the final resolution of his claims; (2) traditional legal remedies would be inadequate; and (3) that he or she has some likelihood of succeeding on the merits of their claim.[99] If, and only if, the plaintiff makes this threshold showing does the court then balances the potential harms to the parties and, if appropriate, the public interest.[100]

The United Supreme Court has cautioned that the need for a proper balance between state and federal authority counsels restraint in the issuance of injunctions against state officers engaged in the administration of the states' criminal laws in the absence of irreparable injury which is both great and immediate.[101] Whereas, in addition to not having standing to seek injunctive/equitable relief on behalf of other Ute tribal members and/or Indians in general, Amboh has not met and cannot meet the prerequisites for an injunction. Amboh will not, for

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[97] *Girl Scouts of Manitou Council, Inc. v. Girl Scouts of U.S. of America*, 549 F.3d 1079, 1085 (7th Cir.2008)(quoted cites omitted).
[98] *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 22 (2008).
[99] *Id.*
[100] *Id.*; *see also Winter,* 555 U.S. at 21-22 (plaintiff seeking preliminary injunction must show "that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest").
[101] *City of Los Angeles v. Lyons*, 461 U.S. 95, 112 (1983).

example, suffer an irreparable injury in the absence of an injunction because she has an adequate remedy at law in the form of this lawsuit for monetary damages,[102] she has no likelihood of succeeding on the merits because the federal courts have already determined that Roosevelt City is not Indian Country, and she was convicted on the charges, which by necessity involved the issue of the Eighth District Court's jurisdiction to hear the case.[103]

ARGUMENT: AMBOH HAS FAILED TO PLEAD A PLAUSIBLE CLAIM FOR RELIEF

Amboh's three *Causes of Action* do not reference a single harm caused to her by County Attorney Foote other than the fact that he prosecuted the State of Utah's case against her. While Amboh does collectively refer to acts or omissions allegedly committed by Duchesne County and/or the Eighth District Court in her *Complaint,* she does not state what, if anything, Foote did that resulted in injury/harm to her other than he prosecuted the State charges that had been brought against Amboh. In addition to not referencing and/or mentioning any wrongs done toher by County Attorney Foote, Amboh has not alleged a plausible claim for relief against Foote in that: (1) she has failed to place him on notice as to the type of claim alleged and ground(s) upon which it rests;.[104] (2) she has not made clear exactly what Foote is alleged to have done to her other than the prosecution;[105] (3) she has not alleged the requisite personal participation by Foote

[102] *See Tucker Anthony Realty Corp. v. Schlesinger,* 888 F.2d 969, 975 (2d Cir.1989)(to establish irreparable harm, the injury alleged must be one requiring a remedy of more than mere money damages).
[103] *See Palma v. Powers*, 295 F.Supp. 924, 941-42 (N.D. Ill.1969)(it is well-established that a state criminal conviction will estop a defendant who is a subsequent plaintiff in a civil rights action from litigating in that action issues which are necessarily resolved against him in the prior criminal proceeding).
[104] *Mountain View Pharmacy v. Abbott Lab'ys.,* 630 F.2d 1383, 1388(10th Cir. 1980).
[105] *Robbins v. Oklahoma*, 519 F.3d 1242, 1250 (10th Cir. 2008).

in a violation of her civil rights;[106] and (4) she has failed to allege a violation of her constitutional rights by Foote much less a violation of a clearly established right.[107]

CONCLUSION

For the reasons stated above, the claims asserted by Amboh in her *Complaint* against County Attorney Foote should be dismissed on the merits and with prejudice.

DATED this 21st day of December, 2022.

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[106] *See Bennett v. Passic*, 545 F.2d 1260, 1262-63(10th Cir. 1976).
[107] *See Robbins*, 519 F.2d at 1249.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21st day of December, 2022, I electronically filed the **MOTION** with the Clerk of the Court using the CM/ECF electronic filing system, which provided notice to the following parties:

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