IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

PRAIRIE BAND POTAWATOMI NATION,
a federally recognized Indian Tribe,

Plaintiff,

vs. Case No. 5:24-cv-4066-KHV-RES

JACKSON COUNTY SHERIFF TIM MORSE,
in his official capacity,

Defendant.

Response to Motion to Amend Complaint, *Doc. 25*

Sheriff Morse, defendant, opposes Plaintiff's Motion to Amend, *Doc. 27*. The proposed amended complaint fails to establish standing and Article III jurisdiction. In sum, the proposed amended complaint does not move the needle with the necessary factual allegations to show an ongoing injury or a real and immediate threat of future injury.

Fed. R. Civ. P. 15(a) provides the basis for granting leave to amend a pleading. The rule allows amendment "only with the opposing party's written consent or the court's leave." A court may withhold leave to amend for reasons such as "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed undue prejudice to the opposing party by virtue of allowance of the amendment, [or] futility of [the] amendment." *U.S. ex rel. Ritchie v. Lockheed Martin Corp*., 558 F.2d 1161, 1166 (10th Cir. 2009) (alteration in original) (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)). Plaintiffs' motion should be denied as futile.

This Court concluded "plaintiff has not alleged that the violations are ongoing or that they pose a real and immediate threat of future injury. The Court therefore questions whether plaintiff

has standing under Article III to seek injunctive relief." *Doc. 25*, 16. The proposed amendment does not remedy the lack of a real and immediate threat of future injury.

> The "irreducible constitutional minimum of standing" to contain three elements:
>
> > First, the plaintiff must have suffered an "injury in fact"—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be "fairly ... trace[able] to the challenged action of the defendant, and not ... th[e] result of the independent action of some third party not before the court." Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision."

Lujan v. Defs. of Wildlife, 504 U.S. 555, 560-61 (1992) (internal quotation marks and citations omitted). To establish standing for prospective injunctive relief, "a plaintiff must be suffering a continuing injury or be under a real and immediate threat of being injured in the future." *Tandy v. City of Wichita*, 380 F.3d 1277, 1283 (10th Cir. 2004). That is, "the plaintiff must be suffering a continuing injury or be under a real and immediate threat of being injured in the future," *id*., and the threatened injury must be more than merely speculative, but must be "certainly impending. *Id. "*A claimed injury that is contingent upon speculation or conjecture is beyond the bounds of a federal court's jurisdiction." *Id., at* 1283–84.

> Under *City of Los Angeles v. Lyons*, 461 U.S. 95 (1983), a plaintiff lacks standing to seek prospective injunctive relief if he or she cannot show a real or immediate threat of future harm. *See id*. at 105–06; *see also O'Shea v. Littleton*, 414 U.S. 488, 495–96 (1974) ("Past exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief … if unaccompanied by any continuing, present adverse effects."); *Buchwald v. University of N.M. Sch. of Med*., 159 F.3d 487, 493 (10th Cir.1998) ("[P]laintiff's standing to seek an injunction ordering her admission to the school based solely on her allegations of past misconduct does not entail standing to seek an injunction prohibiting future use of the disputed preference.").

Big Elk v. Bd. of Cnty. Comm'rs of Osage Cnty., 3 Fed. Appx. 802, 806 (10th Cir. 2001).

> The proposed revisions to the complaint are:

New ¶ 64 describes the current status of the Tribal Court cases against Snak Atak's parent company. This allegation has no bearing on the claims against Sheriff Morse. New ¶ 70 alleges, in conclusory fashion only, that "Sheriff Morse continues to assert even after this incident that that he is not bound by federal law, that he has full jurisdiction, both civil and criminal, over the Nation's Reservation and that the Nation does not have civil regulatory jurisdiction or any other attributes of sovereignty over its own Reservation (see paragraphs 90–92, infra)." New Paragraph 90 selectively quotes from Defendant's motion to dismiss without context or factual basis.

New Paragraph 91 asserts the Kansas Act, 18 U.S.C. § 3243 confers only criminal jurisdiction. This allegation goes only so far as § 3243 was not and is not the only basis for civil jurisdiction by state and county officials on reservations in Kansas. Section 3243 provides:

> Jurisdiction is conferred on the State of Kansas over offenses committed by or against Indians on Indian reservations, including trust or restricted allotments, within the State of Kansas, to the same extent as its courts have jurisdiction over offenses committed elsewhere within the State in accordance with the laws of the State.

18 U.S.C. § 3243. This "unambiguously confers jurisdiction on Kansas to prosecute all offenses—major and minor—committed by or against Indians on Indian reservations in accordance with state law." *Negonsott v. Samuels*, 507 U.S. 99, 105 (1993). Federal courts "retain their jurisdiction to try all offenses subject to federal jurisdiction under 18 U.S.C. §§ 1152 and 1153, while Kansas courts shall have jurisdiction to try persons for the same conduct when it violates state law." 507 U.S. at 105. "[T]o the extent that the Kansas Act altered the jurisdictional landscape, the alteration is not merely by implication: The Act explicitly conferred jurisdiction on Kansas over all offenses involving Indians on Indian reservations." *Id.*, at 106. Aside from the Kansas Act, Kansas' admission as a State conferred the "civil jurisdiction" upon state and county officials.

The various states are allowed to give effect to their laws as applied to Indians on reservations when the laws did not infringe on tribal sovereignty and self-government. *Oklahoma*

v. Castro-Huerta, 597 U.S. 629, 636 (2022) ("To begin with, the Constitution allows a State to exercise jurisdiction in Indian country. Indian country is part of the State, not separate from the State."). "Indian reservations are 'part of the surrounding State' and subject to the State's jurisdiction 'except as forbidden by federal law.'" *Id*. "[R]eservations are part of the State within which they lie and her laws, civil and criminal, have the same force therein as elsewhere within her limits, save that they can have only restricted application to the Indian wards." *Surplus Trading Co. v. Cook*, 281 U.S. 647, 651 (1930). "[I]n the absence of a limiting treaty obligation or Congressional enactment each state ha[s] a right to exercise jurisdiction over Indian reservations within its boundaries." *New York ex rel. Ray v. Martin*, 326 U.S. 496, 499 (1946). "[A]bsent a congressional prohibition, to exercise criminal (and, implicitly, civil) jurisdiction over non-Indians located on reservation lands." *County of Yakima v. Confederated Tribes and Bands of Yakima Nation*, 502 U.S. 251, 257–258 (1992). "State sovereignty does not end at a reservation's border." *Nevada v. Hicks*, 533 U.S. 353, 361 (2001). Plaintiff does not identify any act of Congress which deprives the State of Kansas of criminal and/or civil jurisdiction upon reservations within Kansas' borders.

The United States Constitution "allows a State to exercise jurisdiction in Indian country. Indian country is part of the State, not separate from the State." *Oklahoma v. Castro-Huerta*, 597 U.S. 629, 636 (2022). Certainly, in Kansas, Indian reservations are not separate territories. *Kaul v. State Dep't of Revenue*, 266 Kan. 464, 467, 970 P.2d 60 (1998). The 1861 Act for Admission of Kansas into the Union provides:

> [N]othing contained in the said constitution respecting the boundary of said State shall be construed ... to include any territory which, *by treaty with such Indian tribe*, is not, without the consent of said tribe, to be included within the territorial limits or jurisdiction of any State or Territory; but all such territory shall be excepted out of the boundaries, and constitute no part of the State of Kansas.

12 Stat. 127 (emphasis added). For reservation land to excluded from the jurisdiction of the State

of Kansas, the treaty with the Tribe must exclude the reservation from the state boundary or must expressly require consent of the Tribe to be included within the boundary of the State or territory. *Sac & Fox Nation of Missouri v. Pierce*, 213 F.3d 566, 576–77 (10th Cir. 2000). This binding Tenth Circuit precedent held the boundaries of the State of Kansas excludes only "only those lands which Indian tribes reserved unto themselves 'by treaty' with the United States." The treaties between the United States and the Prairie Band of Potawatomie do not exclude any Indian lands from Kansas' boundaries. *See Treaty with the Potawatomi Nation*, 1846., 9 Stat. 853; *Treaty with the Potawatomi*, 1861, 12 Stat. 1191; and Treaty with the Potawatomi, 1867, 15 Stat. 531.

The rights of Indian Tribes "to make their own laws and be governed by them does not exclude all state regulatory authority on the reservation. State sovereignty does not end at a reservation's border." *Nevada v. Hicks*, 533 U.S. 353, 361–62 (2001). While Indian Tribes are oft referred to as sovereign entities, it does not follow that State law have no force within the boundaries of a Tribe's reservation. *Id*. Indeed, the general rule is that ordinarily, an Indian reservation is considered part of the territory of the State. *Id.* (citations omitted). Service of process, traffic enforcement, and execution of warrants on reservations do not interfere with Tribal sovereignty nor does it impair the Tribe's self-government. *Id.*, at 364. While federal law *may* preempt that state jurisdiction in certain circumstances, unless preempted by Congress "a State has jurisdiction over all of its territory, including Indian country." *Castro-Huerta*, 597 U.S. at 636.

With respect to the Snak Atak, assuming Sheriff Morse interfered with the Nation's exercise of civil-regulatory jurisdiction with respect to Snak Atak, the Complaint does not allege a real or immediate threat of future harm with respect to the Tribe's Tax Commission.

The proposed amended complaint does not plausibly allege an injury in fact that is concrete and particularized and/or actual or imminent. The allegations in the proposed amended complaint amount to threadbare recitals of the elements for an injunction unsupported by factual allegations.

"At the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice." *Lujan*, 504 U.S. at 561"However, '[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.'" *COPE v. Kan. State Bd. of Educ*., 821 F.3d 1215, 1221 (10th Cir. 2016) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678(2009).

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Certificate of Service

On March 3, 2025, the foregoing was electronically filed with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to counsel of record:

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