

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FRANCIS A.L. ENGLEBRIGHT, and)
ROSELLA ENGLEBRIGHT, individually and)
as co-special administrators of the estate)
of FRANCIS A.L. ENGLEBRIGHT, JR.,)

Plaintiffs,)

v.)

Case No.: 24-CV-00552-CVE-CDL

SHANNON BUHL, KODY FISHER, ERIN)
FAULKENBERRY, BRYAN SMITH, special)
administrator of the estate of BRIAN)
CATCHER, deceased, and UNITED)
STATES OF AMERICA,)

Defendants.)

**PLAINTIFFS' REPLY IN SUPPORT OF
ALTERNATIVE APPLICATION TO AMEND**

COME NOW Plaintiffs in reply in support of their alternative application to amend [Dkt. No. 41] and would show the court as follows:

1. The United States first says that any amendment would be futile. Plaintiffs would make the same point as set forth in the reply filed contemporaneously herein with regard to the Cherokee Defendants. But even more so, because the Defendant United States has taken upon itself liability for the Cherokee Nation law enforcement, as alleged in the complaint, amendment would not be futile.

2. Nor does Las Vegas Ice and Cold Storage Co. v. Far West Bank, 893 F.2d 1182 (10th Cir. 1990), apply here. In Las Vegas Ice, the trial court denied the amendment because it was untimely and would substantially broaden issues for trial, as well as the factual basis being known at the time the complaint was filed. The denial of amendment

was upheld because of untimeliness. In Las Vegas Ice, the case had been through motions practice and discovery and was set for trial. In opposition to that, this case is not even at issue and especially in the early pleading stages should amendment be freely granted. Minter v. Prime Equipment Company, 451 F.3d 1196 (10th Cir. 2014)(undue prejudice is harm to a party; undue delay is harm to the court; the purpose of Rule 15 is to provide maximum opportunity for each claim to be decided on its merits and an opportunity to test the claim on the merits should be afforded); Triplett v. LeFlore County, Oklahoma, 712 F.2d 444 (10th Cir. 1983)(there needs to be justifying reasons to deny amendment). Indeed, granting leave to amend where a first complaint is insufficient is relatively common. Moore v. MTTA, 23-CV-154, Docket No. 108 (N.D.Okla. 2025).

3. Finally, Defendant USA says it was never contacted. Attached hereto is a copy of the email sent.

WHEREFORE, premises considered, Plaintiffs pray for leave to amend their complaint, assuming there is some defect the court finds in it.

Respectfully submitted,

FRASIER, FRASIER & HICKMAN, LLP

By: /s/Steven R. Hickman
Steven R. Hickman, OBA #4172
1700 Southwest Blvd.
Tulsa, OK 74107
Phone: (918) 584-4724
Fax: (918) 583-5637
E-mail: info@frasierlaw.com
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 30th day of April, 2025, a true, correct, and exact copy of the foregoing document was served via electronic notice by the CM/ECF filing system to all parties on their list of parties to be served in effect this date.

By: **s/Steven R. Hickman**
Steven R. Hickman