

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

(1) TERRY BAYLES;	)	
(2) KERRY WELBORN;	)	
(3) AUSTIN CLAYLON;	)	
(4) CALEB BACON;	)	
(5) TONY BLAKE;	)	
(6) MISTY CAMPBELL;	)	
(7) BILLY CHASE;	)	
(8) JEREMIAH COLBERT;	)	
(9) GEORGE DAVENPORT;	)	
(10) CHRISTOPHER GRAY;	)	
(11) JAMES HENSON;	)	Case No.: CIV-25-370-JAR
(12) PEYTON JONES;	)	
(13) JAMES GEOFFREY;	)	Magistrate Judge Jason A. Robertson
(14) SAWYER LOPEZ;	)	
(15) ADELBY MARTINEZ; and	)	
(16) JAMES MCKIBBEN,	)	
	)	
Petitioners,	)	
	)	
v.	)	
	)	
(1) THE CHOCTAW NATION OF	)	
OKLAHOMA; and	)	
(2) CHOCTAW COUNTY SHERIFF, TERRY	)	
PARK, EX. REL. COUNTY JAIL,	)	
	)	
Respondents.	)	

**RESPONDENT CHOCTAW NATION OF OKLAHOMA’S RESPONSE IN
OPPOSITION TO PETITIONERS’ OPPOSED MOTION FOR LEAVE
TO AMEND COMPLAINT AND ADD DEFENDANTS (DOC. 31)**

Respondent Choctaw Nation of Oklahoma (the “Nation”), by and through undersigned counsel, submits this Response in Opposition to Petitioners’ Opposed Motion for Leave to Amend Complaint and Add Defendants (Doc. 31) (the “Motion”). The Motion should be denied because the proposed amendment is futile, fails to cure the same jurisdictional and pleading defects raised in the Nation’s pending Motion to Dismiss (Doc. 32), and improperly attempts to expand a narrow § 1303 habeas proceeding into a broad, class-wide institutional reform action.

I. INTRODUCTION AND PROCEDURAL POSTURE

Petitioners seek leave to file a proposed “Second Amended” habeas pleading and to add individuals Robert Apala, Amy Pierce, and Gary Batton, as additional “Respondents/Defendants.” Doc. 31 at p. 2. Petitioners invoke Rules 15, 20, 21, and Rule 19 “necessary party” concepts, asserting the added individuals are “necessary” for Petitioners to assert their claims. Doc. 31 at 3–4.

The Nation has already moved to dismiss the operative habeas petition for lack of subject-matter jurisdiction and failure to state a claim. See Doc. 32, *generally*. The proposed amendment does not cure but instead repeats the same jurisdictional and pleading defects already raised: sovereign immunity and the limited scope of § 1303; failure to exhaust tribal remedies; naming an improper habeas respondent; and the absence of individualized, custody-focused allegations necessary to state a viable § 1303 habeas claim. Doc. 32.

II. LEGAL STANDARD

Rule 15(a)(2) provides leave to amend should be “freely” given when justice so requires, but leave may be denied for, among other reasons, futility. *Foman v. Davis*, 371 U.S. 178, 182 (1962). Amendment is futile when the proposed pleading would still be subject to dismissal under Rule 12(b)(1) and/or 12(b)(6). *Anderson v. Merrill Lynch*, 521 F.3d 1278, 1289 (10th Cir. 2008); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007).

III. ARGUMENT

At the outset, the Nation fully adopts its Motion to Dismiss as though it is set forth herein. Given that the proposed amendment does not address the defects in the Motion to Dismiss, those arguments appropriately address the futility of the proposed amended petition.

Setting aside the issues previously raised in the Pending Motion to Dismiss and reasserted here, other defects render the amendment, either completely or in part, moot and futile.

A. The Proposed Amendment Is Futile Because Not All Petitioners Are in Custody.

Petitioners proposed Second Amended Petition remains futile because it continues to premise § 1303 habeas jurisdiction on the assertion that *all* Petitioners are “in the physical custody of the CNO” and “housed in various county jails,” and that at filing they are “detained by CNO” under Respondents’ “direct control.” Court minutes establish that this is not true for at least Kerry Welborn, George Davenport, Misty Campbell and Tony Blake, each of whom was “released pursuant to plea” with “Bond Exonerated.” Ex. 1 (Welborn); Exs. 2, 3, and 4 (Davenport); Exs. 5, 6, 7, 8, 9, and 10, (Campbell); Exs. 11, 12, 13, and 14 (Blake).¹ Welborn was actually pleased with, even praising, his attorney from the Nation’s Public Defender’s office. Ex. 15, 8:5 – 9:23. Moreover, Austin Claylon has been released into federal custody. Ex. 16.

According to these minutes and orders, Petitioners’ proposed amendment is futile because some of the facts relating to the custody allegations no longer apply, eliminating the live habeas controversy and their standing to seek the relief sought. Section 1303 is a custody-centered habeas remedy authorizing a writ to test the legality of a person’s detention. Because Petitioners’ proposed amendment does not plead any individualized facts establishing that these Petitioners remain detained on the pleaded theory or identifying any custodian who can provide release-type relief, amendment would be dismissed and should be denied as futile.

Accordingly, adding additional officials as Respondents (Apala, Pierce, Batton) cannot revive a non-existent custody-based controversy for released Petitioners, and leave to amend

¹ “[F]ederal courts, in appropriate circumstances, may take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue.” *St. Louis Baptist Temple, Inc. v. Federal Deposit Ins. Corp.*, 605 F.2d 1169, 1172 (10th Cir. 1979).

should be denied as futile. Regardless, the proposed amendment is futile as to all Petitioners as stated in the Motion to Dismiss and reemphasized herein.

B. The Proposed Amendment Is Futile Because It Does Not Cure the Threshold Jurisdictional Defects Already Raised in the Nation’s Motion to Dismiss.

1. ***Sovereign immunity and the limited scope of § 1303 remain dispositive.***

The Nation’s Motion to Dismiss explains that the Court lacks jurisdiction over all non-§ 1303 claims against the Nation because tribal sovereign immunity is jurisdictional and bars suit absent a clear waiver or congressional abrogation. *Kiowa Tribe of Okla. v. Mfg. Techs., Inc.*, 523 U.S. 751, 754 (1998). That “tribal immunity protects tribal officials against claims in their official capacity.” *Fletcher v. United States*, 116 F.3d 1315, 1324 (10th Cir. 1997); *Burrell v. Armijo*, 456 F.3d 1159, 1174 (10th Cir. 2006). Petitioners’ proposed amendment continues to proceed against the Nation and continues to premise jurisdiction on constitutional and other non-§ 1303 theories, but those theories do not “unlock” federal jurisdiction against the Nation in this case. See Doc. 32 at pp. 19–20; *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58-66 (1978). Indeed, as the Nation has already shown, “any amendment would be futile” where there is “no cure available to circumvent the sovereign immunity of the Nation.” Doc. 32 at p. 20.

2. ***Petitioners’ proposed pleading still seeks relief that is categorically beyond § 1303 habeas.***

Even after adding proposed individual respondents, Petitioners requested relief remains sweeping and structural (e.g., a TRO and injunctions restructuring tribal defense operations and removing specific individuals from their roles) rather than individualized release from unlawful custody. Doc. 31 at Ex. A, pp. 25–26 (Prayer for Relief). Habeas is not an “institutional-reform lawsuit.” Doc. 32 at 1. Section 1303 authorizes only a writ of habeas corpus “to test the legality of [a person’s] detention,” not class-wide governance redesign, damages, or fee awards. See *Santa Clara Pueblo*, 436 U.S. at 59; *Wheeler v. Swimmer*, 835 F.2d 259, 261 (10th Cir. 1987).

3. *Petitioners also reassert remedies that independently underscore futility.*

The proposed pleading again seeks attorney’s fees and costs, including under EAJA-style theories. Doc. 31 at Ex. A, pp. 25–26 (Prayer ¶ 7 and seeking “attorney’s fees”). The Nation has already shown EAJA “authorizes fee awards only in civil actions ‘by or against the United States’” and provides no basis for fee liability against the Nation. Doc. 32 at 14; 28 U.S.C. § 2412(a)(1); *Lane v. Peña*, 518 U.S. 187, 192 (1996).

For each of these reasons, the proposed amendment remains jurisdictionally barred and therefore futile.

C. The Proposed Amendment Is Futile Because Petitioners Still Fail to Name (and Plead) a Proper § 1303 Habeas Respondent with Present Authority Over Their Detention.

Petitioners’ Motion asserts the new individuals are “necessary parties” under Rule 19. Doc. 31 at pp. 3–4. But Rule 19 itself requires that any required party be one “whose joinder will not deprive the court of subject-matter jurisdiction.” Fed. R. Civ. P. 19(a)(1). The proposed amendment does not solve the antecedent problem: Petitioners still seek § 1303 habeas relief against parties who are not proper habeas respondents and still do not plead facts establishing present custodial authority by the proposed new individuals.

As the Nation has already briefed, habeas runs against the immediate custodian, not a sovereign entity or non-custodial officials. *Rumsfeld v. Padilla*, 542 U.S. 426, 434–35 (2004). The Nation’s pending Motion to Dismiss explains that Petitioners admit they are housed in county jails, confirming that the sheriff/jail official, not the Nation, is the “immediate physical custodian for habeas purposes,” and that “the Nation is not a proper respondent to a habeas petition.” (Doc. 32 at 15.) The proposed amendment does not change this; it merely adds additional people by title and asserts in conclusory fashion that Petitioners are “under direct control” of “Respondents and their agents” without stating facts to support the addition of the new parties. Doc. 31 at Ex. A, ¶ 1.

That is not a nonconclusory allegation of present custodial authority sufficient to satisfy *Padilla*, *Twombly*, *Iqbal* or § 1303.

Moreover, Petitioners' own proposed pleading continues to underscore the defect: they allege they are in "various county jails" (Doc. 31 at Ex. A, ¶ 1), while simultaneously asking this Court to order structural reforms and TROs that are not tethered to individualized custody determinations. This is precisely the mismatch the Nation's Motion to Dismiss identifies.

D. The Proposed Amendment Is Futile Because Petitioners Still Fail to Exhaust Tribal Remedies and Again Rely Only on Speculative Futility.

The Nation's Motion to Dismiss further explains that exhaustion of tribal remedies is required as a prudential matter grounded in comity, and that Petitioners cannot bypass exhaustion by merely asserting futility. Doc. 32 at 6–10. "Speculative futility is not enough to justify federal jurisdiction"; a party must actually seek adjudication in tribal court. *Bank of Okla. v. Muscogee (Creek) Nation*, 972 F.2d 1166, 1170 (10th Cir. 1992) (quoting *White v. Pueblo of San Juan*, 728 F.2d 1307, 1313 (10th Cir. 1984)); see also *Strate v. A-1 Contractors*, 520 U.S. 438, 453 (1997); *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 20 n.14 (1987).

The proposed amendment does not allege any meaningful attempt to exhaust available tribal remedies. Instead, it again asserts that tribal remedies are inadequate and that federal court is the "correct forum." (See, e.g., Ex. A ¶ 16.) That is the same type of conclusory futility claim the Nation has already shown is insufficient.

E. The Proposed Amendment Is Futile Because It Still Fails *Twombly/Iqbal* and Does Not Plead Individualized, Custody-Focused § 1303 Claims Against the Proposed New Individuals.

Even if jurisdictional barriers did not exist, the proposed amendment remains subject to dismissal under *Twombly* and *Iqbal* because it relies on collective allegations and legal conclusions rather than pleading specific, plausible facts establishing entitlement to habeas relief. Under

Twombly/Iqbal, a pleading must contain sufficient factual matter to state a plausible claim; legal conclusions and “naked assertions” are not entitled to the assumption of truth. *Iqbal*, 556 U.S. at 678–79; *Twombly*, 550 U.S. at 555, 570. Petitioners’ proposed “custody” allegations again assert, in a single collective paragraph, that Petitioners are “under direct control” of respondents and “their agents” and that “Respondents” have interfered with attorney-client communications. (Ex. A ¶ 1.) The proposed amendment still does not allege respondent-specific facts establishing that any of the newly named individuals: (i) have present authority to release any Petitioner; or (ii) are personally responsible for an individual Petitioner’s allegedly unlawful detention as required for § 1303 habeas relief.

As the Nation has already briefed, Petitioners’ allegations target institutional design, not the legality of any particular Petitioner’s custody, and they do not plead individualized “release-warranting custody defects.” (Doc. 32 at 16–17.) Adding names and titles does not supply the missing individualized, custody-focused facts required to state a viable § 1303 claim.

F. Petitioners Rule 19 “Necessary Party” Theory Does Not Justify Leave to Amend (and Underscores Futility).

Petitioners rely heavily on Rule 19 and “judicial economy.” (Doc. 31 at 3–4.) But Rule 19 does not authorize joinder to create jurisdiction where none exists, and Petitioners’ argument ignores Rule 19’s express limitation that any required party must be one whose joinder “will not deprive the court of subject-matter jurisdiction.” Fed. R. Civ. P. 19(a)(1). Here, the Nation’s sovereign immunity and the narrow, custody-focused scope of § 1303 are threshold barriers already presented in the Nation’s pending Motion to Dismiss. (Doc. 32.) No amount of party-joinder rhetoric cures those defects.

Further, Petitioners’ “judicial economy” argument rests on the premise that denial would lead to “identical claims” being refiled and consolidated. Doc. 31 at 2–3. But claims that remain

jurisdictionally barred and implausibly pleaded are not made viable by the possibility of refiling; rather, judicial economy favors denying leave where the amendment does not cure defects and would merely expand motion practice and parties without changing the outcome. *See Foman*, 371 U.S. at 182.

IV. CONCLUSION

Petitioners' Motion should be denied. The proposed amendment is futile because it does not cure the same jurisdictional and pleading defects already raised in the Nation's pending Motion to Dismiss. Doc. 32. Petitioners still (i) seek relief beyond the narrow scope of § 1303; (ii) sue parties barred by sovereign immunity and otherwise not proper habeas respondents; (iii) fail to plead nonconclusory facts establishing present custodial authority by the newly proposed individuals; (iv) fail to exhaust tribal remedies; and (v) fail *Twombly/Iqbal* by relying on collective conclusions rather than individualized, custody-focused allegations.

Accordingly, the Nation respectfully requests that the Court **DENY** Petitioners' Opposed Motion for Leave to Amend Complaint and Add Defendants. Doc. 31.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 6, 2026, I electronically transmitted the attached document to the Clerk of Court using the Electronic Case Filing System for filing. Based on the records currently on file in this case, the Clerk of Court will transmit a Notice of Electronic Filing to those registered participants of the ECF System.

/s/ Madelynn Dancer