

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

(1) TERRY BAYLES,)
(2) KERRY WELBORN,)
(3) AUSTIN CLAYLON,)
(4) TONY BLAKE,)
(5) MISTY CAMPBELL,)
(6) BILLY CHASE,)
(7) JEREMIAH COLBERT,)
(8) GEORGE DAVENPORT,)
(9) CHRISTOPHER GRAY,)
(10) JAMES HENSON,)
(11) PEYTON JONES,)
(12) JAMES GEOFFREY,)
(13) ADELBY MARTINEZ,)
(14) JAMES MCKIBBEN,)

Petitioners,)

v.)

Case No. CIV-25-370-JAR

(1) THE CHOCTAW COUNTY NATION)
OF OKLAHOMA,)
(2) CHOCTAW COUNTY SHERIFF)
TERRY PARK, EX REL. COUNTY JAIL,)

Respondents.)

**DEFENDANT PARK’S MOTION TO DISMISS PETITIONERS’ AMENDED
PETITION FOR WRIT OF HABEAS CORPUS AND BRIEF IN SUPPORT**

Defendant Choctaw County Sheriff Terry Park ex. Rel. County Jail (“Defendant” or “the Sheriff”), in his official capacity, moves this Court to dismiss Petitioners’ claims against him pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Petitioners have failed to state a claim against the Sheriff for which relief may be granted and their claims against the Sheriff should be dismissed for the reasons discussed in the following Brief in Support.

BRIEF IN SUPPORT

STATEMENT OF THE CASE

Per Petitioners’ own allegations, their Petition for Writ of Habeas Corpus is brought pursuant to 25 U.S.C. § 1303 and stems from their detention by the Choctaw Nation of Oklahoma (“CNO”). Also per Petitioners’ own allegations, they are being held in the Choctaw County Jail (“the jail”) on behalf of the CNO on criminal charges pending in the CNO courts. As a result, all actions allegedly taken by jail staff were taken on behalf of the CNO. Despite this, their Amended Petition purports to contain 42 U.S.C. § 1983 claims against the Sheriff for alleged violations of the First, Sixth, Eighth, and Fourteenth Amendments to the U.S. Constitution, for civil conspiracy “under 42 U.S.C. § 1983 and/or ICRA,” and for cruel and unusual punishment in violation of “Eighth/Fourteenth Amendment or ICRA § 1302(a)(7)(a).” [Dkt. 15, pp. 20-21]. However, the Amended Petition is not properly before this Court and Petitioners have failed to state a claim for relief against the Sheriff.

STANDARD OF REVIEW

In considering a 12(b)(6) motion, the truth of a plaintiff’s *well-pled* factual allegations must be viewed in the light most favorable to the plaintiff. *Beedle v. Wilson*, 422 F.3d 1059, 1063 (10th Cir. 2005). In this regard, a plaintiff must allege “enough facts to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp v. Twombly*, 550 U.S. 544, 127 S.Ct. 1955, 1974, 167 L.Ed.2d 929 (2007) (abrogating *Conley v. Gibson*, 355 U.S.41 (1957)). A claim has facial plausibility “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Hall v. Witteman*, 584 F.3d 859, 863 (10th Cir. 2009) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009)). Furthermore, a plaintiff’s “[f]actual allegations must be enough to raise a

right to relief above the speculative level.” *Twombly*, 550 U.S. at 545. The complaint must possess enough heft to “show that the pleader is entitled to relief.” *Id.* It is therefore the plaintiff’s duty to furnish factual “allegations plausibly suggesting (not merely consistent with)” an entitlement to relief. *Id.* The court need not credit bald assertions or legal conclusions. *Anspach v. Philadelphia Dept. of Pub. Health*, 503 F.3d 256, 260 (3d Cir. 2007) (citation omitted). “Legal conclusions masquerading as factual conclusions will not suffice to prevent a motion to dismiss.” *Id.* In *Iqbal*, the Court stressed that “threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice” to overcome a motion to dismiss. *Iqbal*, 556 U.S. at 678.

I. THE AMENDED PETITION IS NOT PROPERLY BEFORE THIS COURT

Petitioners initiated this matter by filing a Petition for Writ of Habeas Corpus pursuant to the 25 U.S.C. § 1303, which is a section of the Indian Civil Rights Act (“ICRA”). [Dkt. 15, p. 2, ¶ 2]. Their Amended Petition is not properly before this Court because Petitioners failed to exhaust their administrative remedies in tribal court prior to filing the present action in federal court.

“A threshold question that **must** be addressed in every habeas case is that of exhaustion.” *Harris v. Champion*, 15 F.3d 1538, 1554 (10th Cir. 1994) (emphasis added). Here, the threshold question which must be addressed is whether Petitioners satisfied the tribal exhaustion rule before filing their habeas Petition in this court pursuant to 25 U.S.C. § 1303. *Valenzuela v. Silversmith*, 699 F.3d 1199, 1202-1203 (10th Cir. 2012). It is well established that Indian tribes are sovereign legal entities which are not subject to federal constitutional limits on state or federal authority. *Id.* Congress enacted § 1302 of the ICRA to provide tribal members with basic rights, some of which are similar to the rights afforded by the U.S. Constitution. *Id.* at 1203 (citing 25 U.S.C. § 1302). Section 1302 “does not waive tribal sovereign immunity and does not provide a civil cause of action in federal court against tribal officials. Instead, tribal members have only one avenue to seek

relief in federal court for violations of § 1302 – filing a petition for writ of habeas corpus pursuant to 25 U.S.C. § 1303.” *Id.* (internal citations omitted). Under the ICRA “[t]he privilege of the right of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe.” 25 U.S.C. § 1303. While the ICRA itself does not contain a tribal remedy exhaustion requirement, habeas petitions filed pursuant to § 1303 are subject to the tribal exhaustion rule. *Valenzuela*, 699 F.3d at 1202-1203. All federal courts addressing § 1303 habeas petitions therefore mandate that two prerequisites must be satisfied before a habeas petition can be filed: the petitioner must be in custody and must first exhaust tribal remedies. *Gilliland v. Barteaux*, 670 F.Supp.3d 1254, 1258 (N.D. Okla. 2023).

The tribal exhaustion rule requires habeas petitioners to exhaust their remedies in the tribal courts where they have been criminally charged before seeking relief in federal court pursuant to § 1303. “[A]bsent exceptional circumstances, federal courts typically should abstain from hearing cases that challenge tribal court [authority] until tribal court remedies, including tribal appellate review, are exhausted.” *Valenzuela*, 699 F.3d at 1206 (quoting *Crow & Dunlevy, P.C. v. Stidham*, 640 F.3d 1140, 1149 (10th Cir. 2011)). *See also Chegup v. Ute Indian Tribe of Uintah and Ouray Reservation*, 28 F.4th 1051, 1068 (10th Cir. 2022) (holding that exhaustion of remedies means, at minimum, that tribal appellate courts have had the opportunity to review the determinations of lower tribal courts); *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 17 (1987). The tribal exhaustion rule may be waived only when “(1) an assertion of tribal jurisdiction is motivated by a desire to harass or is conducted in bad faith, (2) the action is patently violative of express jurisdictional prohibitions, or (3) exhaustion would be futile because of the lack of an adequate opportunity to challenge the court’s jurisdiction.” *Id.* at 1206-1207 (citing *Nevada v. Hicks*, 533 U.S. 353, 369 (2001)). The Tenth Circuit has specifically held that exhaustion requirements apply to plaintiffs

who are challenging tribal court jurisdiction via § 1303 due to alleged violations of their rights under the ICRA. *See Tillett v. Lujan*, 931 F.2d 636, 639-640 (10th Cir. 1991).

Here, Petitioners have expressly admitted that they did **not** exhaust their tribal remedies prior to seeking relief in federal court, alleging in their Amended Petition that they did not do so because they lack a meaningful remedy in the tribal courts. [Dkt. 15, pp. 3-4, ¶ 7]. However, “[b]ecause the Tenth Circuit has taken a strict view of the tribal exhaustion rule, the exceptions are applied narrowly.” *United Keetoowah Band of Cherokee Indians in Oklahoma v. Barteaux*, 527 F.Supp. 3d 1309, 1322 (N.D. Okla. 2020) (citing *Thlopthlacco Tribal Town v. Stidham*, 752 F.3d 1226, 1238 (10th Cir. 2014)). To invoke any of the exhaustion exceptions “the Tenth Circuit requires that the party make a substantial showing of eligibility.” *Id.* Petitioners have not done so in this case. They have done nothing more than vaguely speculate that exhausting their remedies in tribal court would be futile, without alleging that they took any steps whatsoever toward exhaustion which demonstrate or even suggest futility. Speculative futility, however, cannot be presumed and the futility exception to sovereign immunity “clearly does not apply where a party voluntarily chooses not to pursue its case in Tribal Court.” *Bank of Okla. v. Muscogee (Creek) Nation*, 972 F.2d 1166, 1170 (1992).

The limited exceptions to the tribal exhaustion rule also generally do not apply when tribal courts “can make a colorable claim that they have jurisdiction” over the petitioners’ claims. *Id.* It is clear the exemptions do not apply to Petitioners in this case because the CNO tribal court can certainly make a colorable claim that it has jurisdiction over Petitioners’ criminal actions and their claims that the Choctaw Nation has failed to provide them with impartial counsel or due process in violation of the Choctaw Nation Constitution and tribal statutes. [Dkt. 15]. This is particularly true given that Petitioners allege in their Amended Petition that as a direct result of Petitioners’

due process complaints in the tribal court, the Choctaw Nation and Choctaw Nation Public Defender's Office contracted with an attorney to act as new counsel to represent them in their criminal cases. [Dkt. 15, pp. 15-16, ¶ 15(b)]. Moreover, the Amended Petition is essentially a grievance against the CNO's entire court system, the CNO Public Defender's Office, the CNO Prosecutor's Office, the actions of the CNO's public defender's and prosecutor's offices during the course of tribal court proceedings, and the bond amounts set by the CNO tribal courts. [Dkt. 15, pp. 5-16, ¶¶ 9-16].

There is nothing in Petitioners' Amended Petition which remotely suggests that they lack a meaningful remedy in the tribal courts. [Dkt. 15]. Because Petitioners freely admit they have intentionally chosen not to exhaust their tribal remedies and because they are not entitled to any exceptions to the tribal exhaustion rule, their Amended Petition for Writ of Habeas Corpus is not properly before this Court. Petitioners have therefore failed to state a claim for which relief can be granted and the Amended Petition should be dismissed in its entirety pursuant to Rule 12(b)(6).

II. PETITIONERS CANNOT ASSERT ICRA OR 42 U.S.C. § 1983 CLAIMS AGAINST THE SHERIFF WITHIN THEIR HABEAS PETITION

Again, the Sheriff emphasizes that the action which Petitioners have initiated is a Petition for Writ of Habeas Corpus filed pursuant to 25 U.S.C. § 1303. [Dkt. 15, ¶ 2]. That law states that “[t]he privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe.” 25 U.S.C. § 1303. It permits individuals in the custody of a tribe to seek redress via a habeas petition for violations of 25 U.S.C. § 1302 and to “challenge the fundamental fairness of the proceedings in tribal court.” See *Valenzuela, supra*, 699 F.3d at 1202-1203; *United States v. Bryant*, 579 U.S. 140, 157 (2016). In turn, Section 1302 contains a list of rights which “**no Indian tribe**” may violate “**in exercising power of self-government.**” 25 U.S.C. § 1302 (emphasis added). Thus while Congress authorized

civil actions alleging violations of 25 U.S.C. § 1302 to be brought against tribal officials pursuant to § 1303, that statute does not authorize bringing a civil action against non-tribal government officials for alleged violations of the ICRA or for alleged violations of federal constitutional rights. *See Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 60-63, 66-67 (1978) (Congress intended to protect individual tribal members from “arbitrary and unjust actions of tribal governments” through the limited habeas corpus remedy of § 1303, and nothing more); *Chegup*, *supra*, 28 F.4th at 1063 (confirming that § 1303 only authorizes civil actions against tribal officers and warning courts that they should tread lightly in applying a more expansive meaning to the statute in the absence of clear legislative intent).

Here, Petitioners do not allege that the Sheriff is a tribal official. [Dkt. 15]. He is therefore not a proper Respondent to any petition for writ of habeas corpus sought pursuant to § 1303. Furthermore, the Sheriff is not aware of any legal authority which allows Petitioners to assert 42 U.S.C. § 1983 claims within their habeas petition. The Supreme Court has held that the purpose of permitting tribal members to seek habeas relief pursuant to 25 U.S.C. § 1303 (the ICRA) is to prevent injustices perpetrated by sovereign tribal governments. *Santa Clara*, *supra*, 436 U.S. at 66. The purpose of 42 U.S.C. § 1983, however, is to permit government actors or municipalities to be held liable for violations of federally protected rights arising from actions which were taken under color of state law. *See Schaffer v. Salt Lake City Corp.*, 814 F.3d 1151, 1155 (10th Cir. 2016). The two laws are therefore mutually exclusive in this regard. Consequently, there is no conceivable way in which a § 1983 claim may be brought within a § 1303 habeas petition and no way in which an alleged violation of the ICRA could form the basis of a § 1983 lawsuit.

By naming the Sheriff as a defendant to their ICRA claims and by including their § 1983 claims within their § 1303 habeas petition, Petitioners have clearly failed to state a claim against

the Sheriff for which relief can be granted. The claims should therefore be dismissed pursuant to Fed. R. Civ. P. 12(b)(6).

III. PETITIONERS HAVE FAILED TO STATE A 42 U.S.C. § 1983 CLAIM

The Sheriff maintains that § 1983 claims may not be asserted within the Amended Petition. That aside, Petitioners' § 1983 claims should still be dismissed. Although Petitioners have brought § 1983 claims against the Sheriff for alleged violations of their First, Sixth, Fourteenth and Eighth/Fourteenth Amendments to the U.S. Constitution and for civil conspiracy, they have failed to state any such claims for two glaring reasons¹.

First, in order to bring a claim pursuant to 42 U.S.C. § 1983, a plaintiff must allege facts which demonstrate that an actor acting under color or state law deprived them of a federally protected right. *Schaffer, supra*, 814 F.3d at 1155. The government official having acted under color of state law is “a jurisdictional requisite for a § 1983 action.” *Jojoba v. Chavez*, 55 F.3d 488, 492 (10th Cir. 1995) (quoting *Polk Co. v. Dodson*, 454 U.S. 312, 315 (1981)). A government officer “acts under color of state law when he abuses the position given to him by the State.” *West v. Atkins*, 487 U.S. 49, 49 (1988). In other words, a government official does not act under color of state law unless the official's actions were made possible only because he was “clothed with the authority of state law.” *Schaffer*, 814 F.3d at 1156-57 (citing *West*, 487 U.S. at 49). While Petitioners have made the entirely conclusory allegation that “[t]he Choctaw County Jail, acting under color of state law has unlawfully opened and published legal mail, denied Petitioners' access to counsel, and have facilitated retaliation against Petitioners (at the direction of or in concert with

¹ The Sheriff denies that any of the allegations in Petitioners' Amended Petition state a claim for specific violations of their First, Sixth, Fourteenth, or Eighth/Fourteenth Amendment rights. However, the lack of alleged actions taken under color of state law and the lack of allegations which support *Monell* liability are each entirely dispositive of the Motion to Dismiss on their own. Thus the Sheriff will address only those two issues in this Brief.

the CNO Tribe),” none of their factual allegations support that jail employees were acting under color of state law at the time those actions were allegedly taken. [Dkt. 15, ¶ 34]. Conclusory allegations and legal conclusions masquerading as factual conclusions need not be taken as true and will not suffice to overcome a motion to dismiss. *Ruiz v. McDonnell*, 299 F.3d 1173, 1181 (10th Cir. 2002), *cert. denied*, 538 U.S. 999 (2003).

To determine whether acts were taken under color of state law, courts must consider the nature of the government official’s actions, the specific circumstances in which the actions were taken, and the relationship of the actions to the officer’s performance of his duties for the state or political subdivision which employs him. *See David v. City & Cty. of Denver*, 101 F.3d 1344, 1353 (10th Cir. 1996). It is well established that § 1983 actions are not available ““for persons alleging deprivation of constitutional rights under color of tribal law.”” *Burrell v. Armijo*, 456 F.3d 1159, 1174 (10th Cir. 2006) (quoting *R.J. Williams Co. v. Ft. Belknap Hous. Auth.*, 719 F.2d 979, 982 (9th Cir. 1983)). Law enforcement official such as the Sheriff act under color of tribal law, not state law, when they act as agents of a tribal authority. *Barrick v. Kasbaum*, 2025 WL 2755863, at *4 (E.D. Okla. Sept. 29, 2025)².

Here, Petitioners specifically allege that the Sheriff and the Choctaw County Jail are agents of the Choctaw Nation, and that Petitioners are detained by the CNO or on behalf of the CNO within the boundaries of the CNO. [Dkt. 15, pp. 2-3, ¶¶ 3-6]. The allegations against the Sheriff and the Choctaw County Jail are that Petitioners are being housed in the Choctaw County Jail on behalf of the Choctaw Nation while awaiting criminal trials in the Choctaw Nation courts. [Dkt. 15, pp. 2-3, ¶ 3]. Petitioners further allege that the CNO directed jail personnel “to deny the attorneys bringing this cause of action reasonable access to individual Petitioners who have been

² Unpublished decision attached hereto as Exhibit 1.

adversely affected by the illegal acts of the CNO...” [Dkt. 15, p. 4, ¶ 8]. They make similar allegations regarding the CNO or Choctaw Nation Public Defender’s Office directing jail staff to withhold mail from the Petitioners. [Dkt. 15, pp. 17-18, ¶ 19]. The allegations are clearly that jail employees were acting under color of tribal law, not under color of state law, because they were acting pursuant to tribal authority and instruction when detaining Petitioners. [Dkt. 2]. As a result, Petitioners have failed to state a claim for relief under 42 U.S.C. § 1983.

Second, Petitioners have failed to allege facts which support *Monell* liability. Petitioners have sued the Sheriff in his official capacity, which is the same as suing the county which the Sheriff represents. *Porro v. Barnes*, 624 F.3d 1322, 1328 910th Cir. 2010). The Sheriff therefore cannot be held liable under § 1983 based upon the doctrine of *respondeat superior* or vicarious liability. *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 694-95 (1978). In *Monell*, the Supreme Court held that a governmental entity is only liable under § 1983 when the constitutional injury can fairly be said to have been caused by that entity’s own policies and customs. *Id.* at 694. The actions of the governmental entity must be the moving force behind the constitutional violation. *Id.* Governmental liability for a constitutional violation “attaches where - and only where - the entity makes a deliberate choice to follow a course of action from among various alternatives.” *Pembaur v. Cincinnati*, 475 U.S. 469, 483 (1986). In other words, the Sheriff is not subject to § 1983 liability simply because he employs an alleged tortfeasor. *Board of County Commissioners of Bryan County, Oklahoma v. Brown*, 520 U.S. 397, 403 (1997). *Monell* requires Petitioners to allege that the Sheriff enacted or maintained a policy or custom caused the alleged constitutional violation. *See City of Oklahoma City v. Tuttle*, 471 U.S. 808, 821-22 (1985). Additionally, in order to state a municipal liability claim against the Sheriff under § 1983, Petitioners must allege facts which support that the Sheriff enacted or maintained the policy or

custom with deliberate indifference to the risk of a constitutional injury occurring. *George ex rel. Bradshaw v. Beaver Cnty. Bd. of Comm'rs*, 32 F.4th 1246, 1253 (10th Cir. 2022). Alternatively, Petitioners must allege that the Sheriff personally participated in the acts which purportedly violated their constitutional rights. *See Jett v. Dallas Ind. Sch. Dist.*, 491 U.S. 701, 737 (1989).

Petitioners have not done either of those things in this case. There are no allegations in the Amended Petition that the Sheriff had a policy or custom in place which resulted in the alleged constitutional violations and that he enacted or maintained it with deliberate indifference to a constitutional injury occurring. [Dkt. 15]. Nor are there any allegations that the Sheriff personally participated in the alleged constitutional violations. To the contrary, Petitioners vaguely allege that jail staff violated their constitutional rights at the direction of the CNO or its Public Defenders Office. [Dkt. 15]. As a result, Petitioners have wholly failed to state any § 1983 claims against the Sheriff and the claims should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6).

IV. FURTHER AMENDMENT WOULD BE FUTILE

Plaintiffs are generally liberally afforded leave to amend their complaint under Federal Rule of Civil Procedure 15 when justice requires it. *Foman v. Davis*, 371 U.S. 178, 182 (1962) (citing Fed. R. Civ. P. 15(a)). However, complaints are appropriately dismissed without affording plaintiffs leave to amend when it appears they “can prove no set of facts in support of [their] claims that would entitle [them] to relief.” *Grossman v. Novell, Inc.*, 120 F.3d 1112, 1118 (10th Cir. 1997). Even a dismissal with prejudice is appropriate where a complaint fails to state a claim and granting leave to amend would be futile. *Brereton v. Bountiful City Corp.*, 434 F.3d 1213, 1219 (10th Cir. 2006). It is well settled that amendment would be futile when a complaint, even if amended, would still be subject to dismissal. *Jefferson County School Dist. No. R-1 v. Moody's Investor's Services*, 175 F.3d 848, 859 (10th Cir. 1999). *See also Watson ex rel. Watson v. Beckel*, 242 F.3d 1237,

1239-40 (10th Cir. 2001) (amending a complaint is futile when the proposed amendment would be subject to dismissal for any reason, including that it would not survive a motion to dismiss).

Leave to amend in this case would be futile as to Petitioners' claims against the Sheriff because the Sheriff is simply not a proper party to a 25 U.S.C. § 1303 petition for writ of habeas corpus and 42 U.S.C. § 1983 claims cannot be asserted within such a petition. Accordingly, this action should be dismissed with prejudice as to the Sheriff.

CONCLUSION

The Amended Petition for Writ of Habeas Corpus is simply not properly before this Court because Petitioners chose not to exhaust their administrative remedies in the tribal court prior to seeking relief pursuant to 25 U.S.C. § 1303 in federal court. In addition, the Sheriff is not a proper party to Petitioners' ICRA claims because he is not a tribal official and 42 U.S.C. § 1983 claims may not be asserted within a § 1303 habeas action. Even if the Sheriff were a proper party and such claims could be asserted in the Amended Petition, Petitioners have still failed to state a claim against the Sheriff because their factual allegations do not demonstrate the allegedly unconstitutional actions were taken under color of state law and were the result of the Sheriff's policies or customs. The claims against the Sheriff should therefore be dismissed pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim for which relief can be granted.

WHEREFORE, premises considered, Defendant Sheriff respectfully requests this Court GRANT his Motion to Dismiss Petitioners' claims against him.

Respectfully submitted,

s/ Howard T. Morrow

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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 ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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