

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

TERRY BAYLES;)
KERRY WELBORN;)
AUSTIN CLAYLON;)
TONY BLAKE;)
MISTY CAMPBELL;)
BILLY CHASE;)
JEREMIAH COLBERT;)
GEORGE DAVENPORT;)
CHRISTOPHER GRAY;)
JAMES HENSON;)
PEYTON JONES;)
JAMES GEOFFREY;)
ADELBY MARTINEZ;)
JAMES MCKIBBEN;)
Petitioners)
)
-vs-)
)
THE CHOCTAW NATION OF)
OKLAHOMA; CHOCTAW COUNTY)
SHERIFF, TERRY PARK, EX. REL.)
COUNTY JAIL)
Respondents)

No. CIV-25-370

**PETITIONERS' REPLY OUT OF TIME TO CHOCTAW NATION OF OKLAHOMA'S
OPPOSITION TO PETITIONER'S MOTION FOR
TEMPORARY RESTRAINING ORDER**

I. INTRODUCTION

COMES NOW, the Petitioners, individually and collectively by and through their attorneys of record and in support of their Response to Defendant Choctaw Nation of Oklahoma's Opposition to Petitioner's Motion for Temporary Restraining Order, Jointly and severally, and allege and state the following:

The Choctaw Nation's opposition to relies on two main points: (1) sovereign immunity bars any injunctive relief against the Nation, and (2) the requested relief (e.g., making the Public Defender's office independent per the Nation's own laws) constitutes "sweeping reforms" that alter the status quo, requiring heightened scrutiny under *SCFC ILC, Inc. v. Visa USA, Inc.*, 936 F.2d 1096 (10th Cir. 1991). Overall, the Nation's arguments are incorrect and not fully applicable, as sovereign immunity does not absolutely bar prospective injunctive relief against tribal officials, and Petitioners' requests preserve, rather than alter, the status quo by enforcing existing tribal laws.

A. Petitioners seek equitable relief that is tied to habeas relief.

While the Nation's argument is partially accurate, as tribes possess sovereign immunity from suit absent congressional abrogation or waiver (*Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978)), the ICRA does not generally waive immunity for damages or broad injunctive relief (*Id.* at 59). Further, the ICRA § 1303 expressly authorizes habeas review (a form of injunctive relief) for detentions violating ICRA rights, and courts allow prospective injunctive relief against tribal officials in their individual or official capacity for ongoing violations (*Ex parte Young* doctrine analog, 209 U.S. 123 (1908)).¹

The Nation overlooks that Petitioners' TRO seeks targeted equitable relief (such as access to counsel and cessation of ultra vires acts) that is directly tied to habeas and targets tribal officials'

¹ See also *Crowe & Dunlevy v. Stidham*, 640 F.3d 1140, 1154 (10th Cir. 2011).

and jailers' violative actions.² Additionally, post-*McGirt*, courts have not extended immunity to bar such relief in tribal detention cases (e.g., *Loonsfoot v. Brogan*, 2021 WL 1940400 (W.D. Mich. 2021), allowing habeas for due process claims). Finally, the Nation's argument again ignores that the corruption alleged such ultra vires acts, strips officials from tribal immunity, making officials suable individually.³

B. Petitioners seek to restore the status quo, not alter it, warranting standard scrutiny.

The Nation relies on *SCFC ILC v. Visa USA*, 936 F.2d 1096 (10th Cir. 1991) in its opposition, which was an antitrust case involving a preliminary injunction to prevent Visa from enforcing a bylaw excluding a competitor from membership. First, while this is a general TRO standard in the Tenth Circuit, it is not specific to tribes or the ICRA. Second, such standard is not applicable here, because Petitioners' requests do not "alter" the status quo, they seek to restore it.

Importantly, the *SCFC* court defined "status quo" as the "last uncontested status between the parties" before the dispute (*id.* at 1099). Here, Petitioners' requests do not "alter" the status quo, they instead seek to **restore** it by enforcing the Nation's **existing** laws (e.g., independent Public Defender oversight per the Choctaw Nations Criminal Procedure Code). The status quo in this case is the "last peaceable, uncontested status," which is compliance with tribal laws before the alleged corruption. This is *prohibitive* relief (stopping violations), not mandatory "sweeping reforms." Further, post-*McGirt*, no 10th Cir. case has applied a heightened scrutiny standard to ICRA habeas/TROs for due process enforcement. See *United States v. Budder*, 76 F.4th 1007 (10th Cir. 2023) (rejecting due process bars in tribal jurisdiction shifts). The Nation mischaracterizes Petitioners' relief as "sweeping" when it's narrowly targeted to stop ongoing harms.

² See *Lewis v. Clarke*, 581 U.S. 155, 162 (2017) (no immunity for individual acts).

³ See Petitioners' Reply to the Nation's Opposition to Amend [Doc 46].

Further, the Nation's reliance on *O Centro Espirita Beneficiente Uniao Do Vegetal v. Ashcroft*, 389 F.3d 973, 975 (10th Cir. 2004) further supports Petitioner's position. There, the court clarified that heightened scrutiny applies only to mandatory injunctions disrupting the "last uncontested status." As applied here, the status quo is pre-violation state, assuming the Nation at one point was in compliance with its own laws.⁴ Petitioners' TRO simply restores independence per the Nation's Criminal Procedure Code, which is prohibitive and restorative and therefore carries standard scrutiny, not heightened. (*id.* at 1008, Breyer, J., concurring: Restorative relief not heightened scrutiny).⁵ Here, restorative relief such as enforcing existing tribal law, warrants standard scrutiny.

C. Petitioners' claims are not hearsay.

At the time Petitioners filed its TRO [Doc 10], as alleged, Co-Defendants conspired and prevented the undersigned counsel from visiting or calling the named clients, were harassing named Petitioners and subjecting them to confinement, were withholding medical care, were withholding attorney-client mail meant for the named Petitioners, and opening and reading such mail not in the presence of the inmates, and made improper *ex parte* offers of lowered bail, release, and sweetened plea deals if they rejected participating in this suit. As alleged, counsel for petitioners at the time of filing did have to rely primarily on third party information provided by family members of the inmates. However, since January 2026, the undersigned counsel has received dozens of letters from named and unnamed inmates confirming the information that is

⁴ It is currently unknown whether the CNPDO was ever set up properly as mandated by Choctaw law as an independent entity with independent oversight, or if over time, the structure changed to what it is now with the same political oversight and influence of both the CN Prosecutor and PD offices.

⁵ See also *Fish v. Kobach*, 840 F.3d 710, 751 (10th Cir. 2016) (Injunctions halting due process violations are prohibitive to stop harm, not mandatory; standard scrutiny applies); and *United States v. Budder*, 76 F.4th 1307, 1315 (10th Cir. 2023) (Rejected due process bars in tribal jurisdiction; implies that TROs for violations are available without heightened scrutiny if preserving rights).

alleged firsthand. Additionally, counsel for Petitioners estimates that they have been contacted directly by dozens of additional potential plaintiffs in various jails situated within the Choctaw Nation, making the Nation's concerns moot. Further, counsel for Petitioners, Mr. Ellis, provided an affidavit attached to the TRO filing, which is not hearsay, as he experienced firsthand being denied access to his clients being housed at Choctaw County Jail.

Indeed Exhibit 15 attached to the Nation's response in opposition to amend [Doc. 37] is a transcript of a bizarre hearing held immediately before the CNPDO (CN Public Defender's Office) pled a named individual out. Although counsel for Petitioners was not notified of said "hearing," and were thus not present, the contents of the transcript make clear that attorneys from the CNPDO met with a named Petitioner without their counsel present and discussed the instant case, as well as a plea deal in Petitioner's criminal case before the tribe. Such actions were clearly meant to coerce the named Petitioner and ultimately did provide him with a plea deal which included immediate release. Such actions are not only improper but are *direct evidence* of the unethical actions and violative coercion that Petitioners have pled and seek to halt through its TRO. (See Exhibit 15 to Doc 37, pg 7, line 21 "I'm not trying to lose my lawyer", and page 11, lines 17-19 "I want to get out today is what I do. I prayed to get probation is what I want.").

It is clear that this Petitioner inmate wanted to get out of jail and was coerced into testifying before his plea deal on the record, which is exactly the kind of behavior that Petitioners allege – coercion. The additional fact that the Nation did its best to quickly plead every named individual out that it could, offering sweetheart deals to these individuals (likely in an effort to support its incorrect argument that the Petitioners are no longer in 'custody') is only further evidence of the acts Petitioners have complained of. Therefore, these are no longer unconfirmed reports, but rather, direct competent evidence supporting Petitioners' allegations of immediate injury.

CONCLUSION

Overall, the Nation mischaracterizes Petitioners requested relief as altering the status quo, when Petitioners only seek equitable relief which is restorative in nature – for the tribe to follow its own laws. Wherefore, Petitioners Pray this Court grants its requests outlined in its TRO, along with any such further relief that this Court deems is equitable and just.

Respectfully Submitted,

/s/ Tiffani J. Shipman

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of the Court for the for the United States District Court, Eastern District of Oklahoma, by using the Court's Case Management/Electronic Case Filing (CM/ECF) system, on January 10, 2026.

I hereby attest that concurrence in the content of the attached document and authorization to file the attached document has been obtained from the other signatory indicated by a conformed signature (/s/) within the attached e-filed document.

Dated: January 10, 2026

Respectfully Submitted,

/s/ Tiffani J. Shipman

Tiffani J. Shipman, OBA #34261