

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 REPLY IN SUPPORT OF HIS MOTION TO DISMISS

Defendant Choctaw County Sheriff Terry Park (“Defendant” or “the Sheriff”), in his official capacity, hereby submits his Reply to Petitioners’ Response to Defendant’s Motion to Dismiss [Dkt. 45]. Petitioners have not demonstrated they have stated any viable claim against him. Defendant’s Motion should therefore be granted pursuant to Fed. R. Civ. P. 12(b)(6).

I. PLAINTIFFS’ CLAIMS AGAINST DEFENDANT ARE NOT PROPERLY BEFORE THIS COURT

Plaintiffs argue that they were not required to exhaust their administrative remedies in tribal court prior to filing their 25 U.S.C. § 1303 Petition for Writ of Habeas Corpus because the Sheriff is not a tribal entity or official. [Dkt. 45, pp. 5-6]. However, Plaintiffs did not point to *any* statutory

or decisional authority which supports that a § 1303 habeas petition may be considered without first exhausting administrative remedies in tribal court *because the defendant is not a tribe*. No such supporting authority exists or could possibly exist because a county sheriff is never a proper respondent to a § 1303 petition for habeas relief. *See* 25 U.S.C. § 1303 (making a writ of habeas corpus available to tribal members testing the legality of his detention by order of an Indian tribe). Notably, Plaintiffs have not pointed to a single instance of a § 1303 habeas petition *ever* proceeding against a non-tribal entity or official in any court. After an exhaustive search, Defendant was unable to locate *any* court decision *anywhere* permitting that to occur.

The district court in *Tenorio v. High Hawk*, 350 F.Supp.3d 960 (2018) explained that the only proper respondent to a § 1303 is the tribal official with the power to end the restraint of the petitioner's liberty. *Id.* at 965. Defendant is neither a tribal official nor the individual or entity with the power to end the restraint of the petitioners. Thus defendant is not a proper respondent to the habeas petition and the claims against Defendant should be dismissed for that reason. Should this Court determine that Defendant is a proper respondent, then tribal remedies would irrefutably have to first be exhausted before seeking habeas relief via 25 U.S.C. § 1303. *See Tillett v. Lujan*, 931 F.2d 636, 639-640 (10th Cir. 1991).

II. § 1983 CLAIMS CANNOT BE RAISED WITHIN A § 1303 HABEAS PETITION

Petitioners also argue that 42 U.S.C. § 1983 claims may proceed against a non-tribal entity as part of a § 1303 petition for habeas corpus relief. Yet again, Petitioners have not pointed to a single court decision which has ever permitted this to occur. Citing to *Wilkinson v. Dotson*, 544 U.S. 74, 82-82 (2005), *Skinner v. Switzer*, 562 U.S. 521, 533-34 (2011), and *Muhammad v. Close*, 540 U.S. 749, 754-55 (2004), Petitioners contend that “habeas and § 1983 address distinct purposes and may proceed concurrently provided the § 1983 claims do not necessarily imply the invalidity of the fact or duration of confinement.” [Dkt. 45, p. 6]. None of the three decisions to which

Petitioners cite involve a petition for habeas corpus relief brought pursuant to 25 U.S.C. § 1303. Those decisions certainly do not state that § 1983 claims may be brought against a non-tribal entity or official *within* a § 1303 petition for habeas relief. No court has ever ruled otherwise, nor could they, as a non-tribal official is not a proper respondent to a § 1303 habeas petition. Moreover, the Tenth Circuit has emphasized that § 1303 does not create jurisdiction for non-habeas claims such as Petitioners' § 1983 claims, even when they arise from tribal actions. *See Walton v. Tesuque Pueblo*, 443 F.3d 1274, 1278-1280 (2006). It only creates an avenue for relief for alleged violations of 25 U.S.C. § 1302 by tribal officials. *See* 25 U.S.C. §§ 1302-1303. All 42 U.S.C. § 1983 claims contained within the Petition should therefore be dismissed.

III. NO ACTIONS TAKEN UNDER COLOR OF STATE LAW

Petitioners next assert that Defendant can be held liable under 42 U.S.C. § 1983 because jail employees are acting under color of state law, even though petitioners are tribal members being detained pursuant to tribal authority for violation of tribal law. [Dkt. 45, pp. 7-8]. They argue that “non-tribal actors remain state actors in custodial roles, even where tribal interest are involved.” Dkt. 45, p. 8]. However, none of the authority to which they cite says anything of the sort. To the contrary, the cases cited by Petitioners support that when a tribal inmate is detained in a county jail under authority obtained pursuant to a tribal agreement, for violations of tribal law, the jail employees are facilitating tribal law enforcement rather than exercising state authority.

For instance, Petitioners cite to *Oklahoma v. Castro-Huerta*, 597 U.S. 629, 640-41 (2022). Nothing in that case supports Petitioners' contentions. There, the Supreme Court determined that states have concurrent jurisdiction with the federal government to prosecute crimes committed by non-Indians against Indians in Indian Country. *Id.* at 656. It therefore allows state prosecution and detention of non-Indian defendants even when the victim is in Indian and the crime took place in Indian Country. *Id.* at 651-652. The decision clarifies that it does not undermine the sovereignty,

autonomy, or self-government of Indian tribes. *Id.* at 653. In other words, *Castro-Huerta* reinforces that state actors can enforce state laws against non-Indians. Here, Defendant is not enforcing state laws against non-Indians; per Petitioners' own allegations, Defendant is enforcing tribal laws against tribal members. [Dkt. 15]. Thus Defendant is clearly acting pursuant to tribal law, not under color of state law.

Petitioners also cite to *Ross v. Neff*, 905 F.2d 1349, 1353-54 (10th Cir. 1998), arguing that it "confirms that state officers in Indian country act under color of state law unless explicitly tribal-authorized." [Dkt. 45, p. 8]. There, a tribal member was arrested on tribal land by a county deputy for violations of a local ordinance. *Id.* at 1351-52. However, there was no cross-deputization agreement or any other agreement which permitted the deputy to make the arrest. *Id.* at 1352-53. The court therefore found that the officer acted outside his jurisdiction but under color of state law when making the arrest because he was enforcing local (not tribal) ordinances. *Id.* Here, though, there *is* an agreement whereby Defendant houses tribal prisoners under tribal authority for violations of tribal law. Nothing in *Ross* remotely suggests that Defendant or his jail staff was acting under color of state law by housing tribal members being prosecuted by a tribe for breaking tribal laws.

Because jail employees were not acting under color of state law, no § 1983 claims can be maintained against Defendant.

IV. PETITIONERS HAVE NOT STATED A *MONELL* CLAIM

Petitioners make the conclusory argument in their response that they have stated a § 1983 claim against Defendant because "they allege that the Jail and Sheriff maintained policies, customs, and practices or exhibited deliberate indifference directly causing the violations." [Dkt. 45, p. 9]. However, Petitioners did not identify a single paragraph in their Amended Petition which demonstrates they made allegations as to policies and procedures which satisfy *Monell*

requirements.

As Defendant explained in his Motion to Dismiss, *Monell* requires Petitioners to allege that the Sheriff enacted or maintained a policy or custom which caused the alleged constitutional violation. *See City of Oklahoma City v. Tuttle*, 471 U.S. 808, 821-22 (1985). Additionally, Petitioners must allege facts which support that the Sheriff enacted or maintained that 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 can 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).

Although Defendant argued Petitioners' Amended Petition does not meet this burden, Petitioners have not demonstrated otherwise.

CONCLUSION

Petitioners cannot bring *any* claims against Defendant in their 25 U.S.C. § 1303 Amended Petition for Writ of Habeas Corpus. The statute simply does not allow for enforcement of federal constitutional provisions against non-tribal officials or entities. Nor could they maintain a separate § 1983 suit against Defendant under the facts alleged, as Defendant and his employees are not acting under color of state law by detaining Petitioners.

WHEREFORE, premises considered, Defendant Choctaw County Sheriff Terry Park, in his official capacity, respectfully requests this Court GRANT his Motion to Dismiss with prejudice.

Respectfully submitted,

s/ Howard T. Morrow

Jordan L. Miller, OBA No. 30892
Howard T. Morrow, OBA No. 32650
COLLINS ZORN & WAGNER, PLLC
429 N.E. 50th Street, Second Floor
Oklahoma City, OK 73105
Telephone: (405) 524-2070
Facsimile: (405) 524-2078
Email: jlm@czwlaw.com;
htm@czwlaw.com

**ATTORNEYS FOR DEFENDANT
CHOCTAW COUNTY SHERIFF TERRY
PARK, EX REL. COUNTY JAIL**

CERTIFICATE OF SERVICE

I hereby certify that on February 16, 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:

Garrett Eller, email at: garrett@ellerlegalplanning.com
ELLER LEGAL PLANNING, LLC
539 W. Commerce Street, Suite 1386
Dallas, TX 75208

Tiffani J. Shipman, email at: tiffanijshipman@gmail.com
Vernon Dale Ellis, Jr., email at: insurancelaw59@gmail.com
SHIPMAN LAW, PLLC
P.O. Box 67
Durant, OK 74702
Attorneys for Plaintiffs

J. Renley Dennis, email at: renley@dennislawok.com
Dennis Law, PLLC
305 N.W. 5th Street
P.O. Box 1072
Oklahoma City, OK 73102
Attorney for Defendant The Choctaw Nation of Oklahoma

s/ Howard T. Morrow
Howard T. Morrow