

**Case No. 25-6153**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT**

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SHAWN WALDEN – *Plaintiff-Appellant*,

v.

THE CITY OF DUNCAN OKLAHOMA, a municipal corporation, and  
CHRISTIAN ARCHER, in his official capacity and individual capacity –  
*Defendants-Appellees.*

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Appeal from the United States District Court for the  
Western District of Oklahoma  
Case No. 23-CV-01075-PRW  
Hon. Patrick R. Wyrick

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**RESPONSE BRIEF OF DEFENDANTS-APPELLEES  
THE CITY OF DUNCAN AND CHRISTIAN ARCHER**

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**December 11, 2025**

**ORAL ARGUMENT IS REQUESTED**

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**STATEMENT OF PRIOR OR RELATED APPEALS**

Appellee adopts the “STATEMENT OF RELATED CASES OR APPEAL” found at page 1 of Appellant’s Opening Brief.

**RESPONSE BRIEF OF DEFENDANTS/APPELLEES OFFICER  
CHRISTIAN ARCHER AND THE CITY OF DUNCAN, OKLAHOMA**

Defendants/Appellees, Officer Christian Archer and the City of Duncan, submit this Response Brief to the Opening Brief filed by Plaintiff/Appellant, Shawn Walden.

**JURISDICTIONAL STATEMENT**

The Appellees agree that the District Court has jurisdiction over any alleged federal claim, pursuant to 28 U.S.C. § 1331. (App. Vol. 1 at 15, 21).<sup>1</sup> However, Appellees deny that such federal claims can proceed past the jurisdictional bar since Officer Archer was not acting under color of state law. (App. Vol. 1 at 18, 24).

Appellees also agree that the District Court had jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367. The District Court retained such jurisdiction pursuant to 28 U.S.C. § 1367, even after the dismissal of the federal claims.

The District Court entered summary judgment on all claims on September 22, 2025. (App. Vol. 2 at 474-489). The Appellees do not contest that Walden filed a timely notice of appeal on October 1, 2025. (App. Vol. 2 at 490-491).

This Court has jurisdiction under 28 U.S.C. § 1291 because the appeal is taken from a final decision of a United States district court within the Tenth Circuit, the United States District Court for the Western District of Oklahoma.

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<sup>1</sup> References to the Appellant's submitted Appendix shall be abbreviated as "App. Vol."

### **STATEMENT OF THE ISSUES**

As a preliminary matter, Walden's statement of the issues does not comply with Tenth Circuit Rule 28.1(A) because it does not cite the portions of the record where each of the identified issues was raised by Walden in the District Court and ruled on by the District Court. Nevertheless, the specific issues on appeal are as follows:

1. Did the District Court err in granting summary judgment to Officer Archer on the 42 U.S.C. § 1983 claim against him on the grounds that he was not acting under color of **state** law? (App. Vol. 2 at 480-488)

2. Did the District Court err in retaining jurisdiction over the state law claims after finding it lacked jurisdiction over the federal claims?<sup>2</sup>

3. Did the District Court err in granting summary judgment to the City on the state law claims asserted under the Oklahoma Governmental Tor Claims Act based on its finding that Officer Archer was not acting under color of **state** law? (App. Vol. 2 at 480-488)

Although each issue is distinct, the clear overarching question is whether Officer Archer was acting under color of tribal or state law. (App. Vol. 2 at 480-488). As explained below, because Officer Archer's power to arrest Walden existed only by

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<sup>2</sup> This issue was not briefed before the District Court below and thus, no Appendix cite is available.

virtue of tribal authority, he was acting under color of tribal law. (App. Vol. 2 at 480-488).

### **STATEMENT OF THE CASE**

This case concerns the December 2022 arrest of Mr. Shawn Walden, an Indian, on tribal land by cross-commissioned<sup>3</sup> Officer Christian Archer. (App. Vol. 1 at 36-37, 72-75, 97-100, 129, 166-169, 195-198). Walden’s accusations that Officer Archer did not have probable cause to arrest Walden do not directly impact the question before the Court today. However, a brief synopsis of the incident is appropriate, especially considering Walden provides a version of events unsupported by the appellate record.

#### **A. The Underlying Arrest**

On December 30, 2022, at approximately 1:12 p.m., Officer Archer was dispatched to the Chisolm Corner store in Duncan, Oklahoma, after receiving reports that a man later identified as Walden had repeatedly dropped a firearm inside the store. (App. Vol. 1 at 33-34, 72-78, 126, 166-172). When Officer Archer arrived, he approached Walden’s vehicle and asked him if he had been drinking or taking any medication. (App. Vol. 1 at 34, 72-78, 126, 166-172). Walden denied that he was

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<sup>3</sup> Officer Archer has held a Chickasaw Lighthorse Special Law Enforcement Commission since December 7, 2017. (App. Vol. 2 at 129). This Commission gives Officer Archer the power “to enforce Chickasaw Nation law within Chickasaw Nation Indian Country as a Chickasaw Nation Lighthorse officer.” (App. Vol. 1 at 98).

intoxicated and claimed that he had been working all night the night before. (App. Vol. 1 at 34-35, 126-127; App. Vol. 2 at 210, 236-251, 312, 336-350). Because of Walden's lethargic condition and the behavior previously reported, Officer Archer administered the horizontal gaze nystagmus test, a standardized field sobriety test, to determine whether Walden was intoxicated. (App. Vol. 1 at 34-35, 72-78, 126, 166-172). Officer Archer observed that Walden had a circular swaying motion, muscle tremors, and slurred speech. (App. Vol. 1 at 34-35; 72-78, 83-88, 126-127, 166-172, 177-179, 184-186). He also observed other indications of intoxication, such as red and glassy eyes, tremors, duck feet with locked knees, and lethargy. (App. Vol. 1 at 34-35, 72-78, 126, 166-172). Walden denies that Officer Archer observed these signs; however, body camera footage and other officers at the scene corroborate Officer Archer's observations. (App. Vol. 1 at 79-82, 83-88, 173-176, 177-179, 184-186; App. Vol. 2 at 211, 313). Based on these indicators, Officer Archer believed he had probable cause to arrest Walden. (App. Vol. 1, 141-142, 166, 172). Officer Archer did not conduct further sobriety tests, as he had previously interacted with Walden and knew how agitated Walden could become when intoxicated. (App. Vol. 1 at 35, 72-78, 128, 166-172)

Officer Archer took Walden to the Stephens County Jail, where he was later booked in on charges of Actual Physical Control and Carrying Firearms While Under the Influence. (App. Vol. 1 at 35, 72-78, 128, 166-172). Since Walden was a

member of the Choctaw Tribe, Officer Archer filled out a Chickasaw Nation Probable Cause Affidavit. (App. Vol. 1 at 38, 72-78, 101-102; 129, 166-169, 199-200; App. Vol. 2 at 213, 316). Due to his tribal status, Walden was charged under the Chickasaw Nation Tribal Code, and the charges were ultimately dismissed. (App. Vol. 1, 37-38, 114-115, 129, 201-202; App. Vol. 2 at 213, 316).

**B. Facts Most Relevant to This Appeal:**

The core issue before the Court today is whether Officer Archer was acting pursuant to his authority as a tribal officer or a state officer. The undisputed, material facts relevant to such a question are as follows:

- The site of this incident, the intersection of Highway 81 and Plato Road in Duncan, Oklahoma, is located within the jurisdiction of the Chickasaw Nation Tribe. (App. Vol. 1 at 11, 33, 36, 72-75, 102, 125, 128-132, 166-169, 195-200; App. Vol. 2 at 212-213, 315, 483).
- The Duncan Police Department have a Law Enforcement Commission Agreement with the Chickasaw Nation Tribe, which authorizes the Duncan police officers to provide law enforcement services and to make arrests in Indian Country within or near the jurisdiction of the Chickasaw Nation Tribe. This agreement was in place at the time of this incident. (App. Vol. 1 at 36, 72-75, 97-102, 125, 128-132, 195-202; App. Vol. 2 at 212-213, 315).
- Walden is a member of the Choctaw Tribe. (App. Vol. 1 at 36-37, 72-75, 104, 129, 166-169, 181; App. Vol. 2 at 213, 315, 483).
- Officer Archer has held a Chickasaw Lighthorse Special Law Enforcement Commission since December 7, 2017. Officer Archer's status as a cross-commissioned officer empowered him to "enforce Chickasaw Nation law within Chickasaw Nation Indian Country as a Chickasaw Nation Lighthorse officer." (App Vol. 1 at

36, 72-75, 97-100, 129-130, 166-169, 195-198, App. Vol. 2 at 212-213, 315, 483).

- Under *McGirt v. Oklahoma*, 591 U.S. 894 (2020), the Chickasaw Nation is the entity with the power to charge Walden with the crimes he committed in Indian country. Walden's case was heard in the Chickasaw Nation District Court and ultimately dismissed. (App. Vol. 1, 37-38, 114-115, 129, 201-202; App. Vol. 2 at 213, 316, 484).
- Officer Archer only had the jurisdiction to make this arrest due to his cross-commissioned status. (App Vol. 1 at 36, 39-40, 72-75, 97-100, 129-130, 166-169, 195-198; App. Vol. 2 at 484).

### **C. Plaintiff's Misrepresentation of The Record**

Appellees would be remiss if they did not correct Walden's "Statement of the Case" and "Statement of Material Facts." As for Walden's "Statement of the Case," it is not supported by the record and does not make the required references to the Appendix.<sup>4</sup> Instead of providing the Court with a clear and supported statement of the case, Walden uses it as a chance to tell his unsupported version of events without any citation to the summary judgment record.

Walden continues to make unsupported statements throughout his Statement of Material Facts. Walden cites to his Responses to the Appellees' Motions for Summary Judgment, as well as his Statement of Facts and claims that the "quoted portions of these facts were not contested below and are not contested here." (Aplt.

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<sup>4</sup> Tenth Circuit Rule 28(a)(6) and Federal Rule of Appellate Procedure Rule 28(a)(6) require that a party make appropriate references to the record in their statement of facts that comply with Federal Rule of Appellate Procedure Rule 28(e).

Opening Br. at 8-10). That is not the case. The quotes that Walden claims are not contested assert that Officer Archer, throughout his entire interaction with Walden, was acting in his capacity as a Duncan City Police officer and arrested Walden pursuant to his position as a municipal officer enforcing state law. (App. Vol. 2 at 209-219, 312-323). Appellees have maintained, and Walden does not dispute, that the only reason Officer Archer had the jurisdiction to arrest Walden was due to his cross-commission status. (App. Vol. 1, 37-38, 114-115, 129, 201-202; App. Vol. 2 at 213, 316, 484-485). As such, he was acting under color of tribal law. (App. Vol. 1 at 39-40, 131-133; App. Vol. 2 at 413-414, 435-436, 474-479).

Walden also cites to his statement of facts allegedly precluding summary judgment and implies that since Officer Archer allegedly Walden as a City of Duncan Police Officer, never explicitly stated that he was a tribal officer, and wore Duncan Police Department clothing, somehow Officer Archer could not act within his tribal authority. (Aplt. Opening Br. at 10-11). As discussed below, this is incorrect.

#### **D. Procedural History**

Walden filed this case in the United States District Court for the Western District of Oklahoma on November 27, 2023. (App. Vol. 1 at 2). In his original Complaint, Walden brought 42 U.S.C. § 1983 claims against Officer Archer and the City, based on an alleged violation of his constitutional rights under the Fourth, Fifth,

and Fourteenth Amendments. (App. Vol. 1 at 10-14). Specifically, Walden asserted that Officer Archer falsely arrested him without probable cause and filled out a fraudulent probable cause affidavit. (App. Vol. 1 at 10-14). Walden also alleged that the City was liable under 42 U.S.C. § 1983 for these constitutional violations, based on its alleged failure properly train and supervise Officer Archer. (App. Vol. 1 at 10-14). Additionally, Walden asserted separate state law tort claims against the City under the Oklahoma Governmental Torts Claims Act (“GTCA”). (App. Vol. 1 at 10-14).

Both Officer Archer and the City of Duncan filed Motions for Summary Judgment. (App. Vol. 1 at 27-52; 118-146). In those motions, the City and Officer Archer argued that Officer Archer was not acting under color of state law at the time of Walden’s arrest but instead was acting under color of tribal law. (App. Vol. 1 at 39-40; 131-133).

Since Officer Archer acted pursuant to his tribal authority, the City and Officer Archer contended that Walden could not establish a viable claim under 42 U.S.C. § 1983. (App. Vol. 1 at 39-40; 131-133). It is undisputed that Walden is an Indian. (App. Vol. 1 at 36-37, 72-75, 104, 129, 166-169, 181; App. Vol. 2 at 213, 315, 483). The arrest occurred on tribal land, and at the time, Officer Archer was cross-commissioned with the Chickasaw Nation, which authorized him to make arrests in Indian country within or near the jurisdiction of the Chickasaw Nation

Tribe. (App. Vol.1 at 36, 72-75, 97-102, 128, 166-169, 201-202; App. Vol. 2 at 212, 315, 483) Without this cross-commissioned status, Officer Archer **would not** have had the jurisdiction to arrest Walden. (App. Vol. 1, 36-38, 72-75, 97-102, 114-115, 128-129, 166-169, 201-202 App. Vol. 2 at 213, 316). Thus, Officer Archer was acting under color of **tribal law**, not state law. (App. Vol. 1 at 39-41; 131-133).

The City further argued that Walden could not succeed on any claims against the City of Duncan, as Officer Archer was acting within the scope of his powers as a tribal officer, not a state officer, and was not acting within the scope of his employment with the City. (App. Vol. 1 at 39-40). Finally, the City and Archer asserted that even if Archer were deemed to have acted under color of state law, he nonetheless had probable cause to arrest Walden. (App. Vol. 1 at 41-52). Thus, no constitutional violation occurred, and Walden cannot sustain any claims under the GTCA. (App. Vol. 1 at 41-52).

In his Response to Officer Archer's Motion for Summary Judgment, Walden argued that Officer Archer did not properly raise the issue of whether Officer Archer was acting under tribal authority and thus, he need not address it at all. (App. Vol. 2 at 226-229). However, he went on to argue that Officer Archer acted under color of state law during the arrest because Walden understood Archer to be a Duncan Police Officer and believed the authority Officer Archer exercised at that time derived from

his position as a municipal police officer. (App. Vol. 2 at 226-229). Walden also addressed the probable cause issue. (App. Vol. 2 at 222-226).

After the City moved for summary judgment, Walden dismissed all 42 U.S.C. § 1983 claims against the City. (App. Vol. 2 at 325). In his Response to the City's Motion for Summary Judgment, Walden asserted that the City waived the argument that Officer Archer's cross-commission status takes him outside the scope of his employment. (App. Vol. 2 at 325-26). Walden also claimed that the City was vicariously liable for Officer Archer's allegedly negligent actions. (App. Vol. 2 at 328-330). Both Archer and the City filed Replies. (App. Vol. 2 at 406-417, 426-438).

After the briefing was complete, Magistrate Judge Jackson, of the United States District Court of the Eastern District of Oklahoma, issued a Report and Recommendation on a similar issue in *Barrick v. Bd. Of Cnty. Comm'rs of McCurtain Cnty.*, No. 22, CIV 23-129 (E.D. Okla. July 9, 2024). (App. Vol. 2 at 449-464). In *Barrick*, officers who were cross commissioned with the Choctaw Nation attempted to arrest a member of the Choctaw Tribe inside the Choctaw Nation. (App. Vol. 2 at 449-464). All the individual officers filed motions for summary judgment, asserting that they were acting under color of tribal law, not state law. (App. Vol. 2 at 449-464). After hearing oral argument and taking the motions under advisement, Judge Jackson recommended that the individual officers'

motions for summary judgment be granted because they were acting under tribal, not state, law. (App. Vol. 2 at 449-464).

Judge Jackson's Report and Recommendation identified the relevant question in such cases to be "whether the officers were acting under the color of tribal law or state law, or both, *i.e.*, *which* official duties took precedence." (App. Vol. 2 at 460) (emphasis in original)). Judge Jackson ultimately concluded that because the officers had jurisdiction to arrest the tribal member only by virtue of their cross-commissioning by the Tribe, they were exercising authority possessed by virtue of tribal law. (App. Vol. 2 at 461-463). As such, the officers were not, and could not, have been exercising power "possessed by virtue of state law and made possible only because the [alleged] wrongdoer is clothed with the authority of state law," and therefore, there was no 42 U.S.C. § 1983 claim. (App. Vol. 2 at 461-463 (quoting *United States v. Classic*, 313 U.S. 299, 326 (1941))).

Officer Archer and the City gave notice of Judge Jackson's decision to the District Court<sup>5</sup> and Walden was given a chance to respond to the supplemental authority. (App. Vol. 2 at 447-448, 469-473)). Appellees were then given the chance to file a reply to Walden's Response, which they did. (App. Vol. 2 at 474-479).

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<sup>5</sup> Judge Jackson's decision was adopted by Judge Heil on September 29, 2025. See *Barrick v. Bd. of Cnty. Commissioners of McCurtain Cnty., Oklahoma*, No. 23-CV-129-JFH-GLJ, 2025 WL 2755863 (E.D. Okla. Sept. 29, 2025). This ruling has also been appealed to this Court. See *Barrick v. Kasbaum, et al.* Case No. 25-7082.

On September 22, 2025, Judge Wyrick of the Western District of Oklahoma District Court issued an Order granting Officer Archer and the City's Motions for Summary Judgment. (App. Vol. 2 at 480-488). In his Order, Judge Wyrick outlined the evidence relevant to the color of law issue, finding that: (1) Walden is an Indian; (2) he was arrested on Chickasaw Nation lands; (3) Officer Archer was a Chickasaw Lighthorse Special Law Enforcement Commissioned officer at the time of the arrest; and (4) the Chickasaw Reservation remains Indian Country. (App. Vol. 2 at 483). As such, Officer Archer "**was incapable** of wielding the power of state law against Walden" pursuant to *McGirt v. Oklahoma*, 591 U.S. 894, 898 (2020) and any authority that Officer Archer did exercise over Walden was pursuant to the authority granted to him by the Chickasaw Nation. (App. Vol. 2 at 484 (emphasis added)).

The question then became whether Officer Archer could be said to have arrested Walden under color of state law even though he had no legal authority to do so under state law. (App. Vol. 2 at 484). Judge Wyrick considered the traditional definition of acting under color of state law for purposes of 42 U.S.C. § 1983, which requires that a defendant exercise power possessed by virtue of state law and made possible because the defendant was clothed with the authority of state law. (App. Vol. 2 at 484). Judge Wyrick reasoned that Officer Archer was not acting under color of state law because his authority to arrest Walden in Indian Country existed **solely** by virtue of his Chickasaw Lighthorse Special Law Enforcement Commission. (App.

Vol. 2 at 484-485). Although Walden was initially arrested based on a violation of state law, Judge Wyrick emphasized that he was then charged under the Chickasaw Nation Tribal Code, underscoring that the tribal source of authority was operative at the time of the arrest. (App. Vol. 2 at 485-486).

To illustrate his point, Judge Wyrick offered a simple example: if a cross-commissioned officer—regardless of wearing a city police uniform, driving a city cruiser, or arresting someone for a state-law offense—makes an arrest in Indian country pursuant to tribal cross commission, that arrest is legally valid under tribal law. (App. Vol. 2 at 485). Any subsequent conviction in tribal court would require no retroactive justification, because the arrest was already lawful at the moment it occurred by virtue of the officer’s tribal commission. (App. Vol. 2 at 485). Thus, the decisive fact is the actual legal authority under which the officer acted. (App. Vol. 2 at 485)

Judge Wyrick also addressed Walden’s criticisms of Judge Jackson’s failure to address *Bressi v. Ford*, 575 F.3d 891 (9th Cir. 2009) in his *Barrick* opinion. (App. Vol. 2 at 486-487). Judge Wyrick noted that Walden overlooked a key difference between *Bressi* and *Barrick*. (App. Vol. 2 at 486-487). In *Barrick*, the arresting officers could exercise authority over the Indian plaintiff **only** because they possessed a tribal grant of power. (App. Vol. 2 at 486-487). *Bressi*, by contrast, involved a non-Indian arrested by tribal officers who were authorized to enforce both

tribal and state law. (App. Vol. 2 at 486-487). In that context, it was unsurprising that the officers acted under color of state law. (App. Vol. 2 at 486-487). The relevant question here, however, is whether an officer can be said to act under color of state law when the plaintiff is **not subject to the exercise of state authority at all** in the circumstances presented. (App. Vol. 2 at 486-487).

Judge Wyrick carefully identified the facts relevant to holding that Officer was acting under color of tribal law and provided a thorough analysis explaining why those facts established that a 42 U.S.C. § 1983 claim could not succeed against Officer Archer. (App. Vol. 2 at 480-488) Judge Wyrick also properly concluded that since Officer Archer was acting pursuant to the authority granted to him by the Chickasaw Nation, his actions were beyond the scope of the GTCA. (App. Vol. 2 at 480-488). Thus, Judge Wyrick granted Officer Archer and the City of Duncan summary judgment. (App. Vol. 2 at 480-488). Walden then appealed to this Court. (App. Vol. 2 at 490-91).

### **SUMMARY OF THE ARGUMENT**

State law enforcement officers do not have authority to arrest Indians in Indian country. *See McGirt v. Oklahoma*, 591 U.S. 894, 898 (2020). The Tenth Circuit has confirmed that states lack “independent authority to enforce their own laws over Indians on Indian land.” *Ross v. Neff*, 905 F.2d 1349, 1353 (10th Cir. 1990). State

authority, therefore, cannot furnish the basis for an arrest of an Indian on tribal land. The only authority capable of empowering such an arrest is tribal authority.

In this case, Officer Archer's ability to arrest Walden existed solely because the Chickasaw Nation vested him with that authority. (App Vol. 1 at 36, 39-40, 72-75, 97-100, 129-130, 166-169, 195-198; App. Vol. 2 at 484). The undisputed facts show that Walden is an Indian, and this incident took place on Indian land. (App. Vol. 1 at 36-37, 72-75, 97-102, 104, 128-129, 166-169, 181, 201-202; App. Vol. 2 at 212-13, 315-16, 483). Thus, the only authority under which Officer Archer could have arrested Walden is under tribal authority. Even though he is a cross-commissioned state and tribal officer, this does not change the fact that his state authority does not reach tribal land and cannot be invoked to transform tribal action into state action.

The distinction as to where Officer Archer derived his authority is dispositive under 42 U.S.C. § 1983, as 42 U.S.C. § 1983 undoubtedly only applies to officials acting "under color of state law," a fact that Walden does not dispute. Yet, Walden asks this Court to find that Officer Archer was acting under color of state law for the purpose of a 42 U.S.C. § 1983 claim, based on Officer Archer's appearance of state authority and his alleged simultaneous acts under both state and tribal law. However, the state has no jurisdiction over an Indian on tribal land. There was no state authority for Officer Archer to invoke or to "share." There is also no legal support

for the assertion that Officer Archer could have been acting pursuant to both authorities at once. Officer Archer's actions were rooted exclusively in the Chickasaw Nation's grant of authority. Thus, the color of state law requirement of 42 U.S.C. § 1983 cannot be met. The District Court therefore correctly granted summary judgment on the 42 U.S.C. § 1983 claim against Officer Archer. (App. Vol. 2 at 480-488).

The judgment in favor of the City of Duncan should also be affirmed. The District Court acted within its discretion in retaining supplemental jurisdiction over the remaining Governmental Tort Claims Act claim after dismissing the federal claim. Further, because Officer Archer acted solely under tribal authority, he necessarily acted outside the scope of his state employment for purposes of the GTCA. The City cannot be liable under the Act for conduct that the State itself lacked jurisdiction to authorize.

In sum, Officer Archer acted only under tribal authority, and neither 42 U.S.C. § 1983 nor the GTCA provides a basis for liability. The District Court's judgment should be affirmed.

### **STANDARD OF REVIEW**

A district court's grant of summary judgment is reviewed de novo, with the appellate court "drawing all reasonable inferences and resolving all factual disputed in favor of the non-moving party." *Yousuf v. Cohlma*, 741 F.3d 31, 37 (10th Cir.

2014). Although the review of the record is de novo, that review is conducted “from the perspective of the district court at the time it made its ruling,” and review is limited “to the materials adequately brought to the attention of the district court by the parties.” *Fye v. Okla. Corp. Comm’n*, 516 F.3d 1217, 1223 (10th Cir. 2008). Summary judgment should be granted when there is no genuine dispute of material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). The Supreme Court has clarified that “there is no issue for trial unless there is sufficient evidence favoring the non-moving party for a jury to return a verdict for that party.” *Anderson v. Liberty Lobby*, 477 U.S. 242, 249 (1986). Consequently, “the mere existence of a scintilla of evidence in support of a plaintiff’s position will be insufficient; there must be evidence on which a jury could reasonably find for the plaintiff.” *Id.* A movant’s summary judgment burden is therefore properly met by reference to the lack of evidence in support of a plaintiff’s position. *See Adler v. Wal-Mart Stores, Inc.*, 144 F.3d 664, 671 (10th Cir. 1998). Moreover, “(i)n response to a motion for summary judgment, a party cannot rely on ignorance of facts, on speculation, or on suspicion, and may not escape summary judgment in the mere hope that something will turn up at trial.” *Conaway v. Smith*, 853 F.2d 789, 794 (10th Cir. 1988).

## **ARGUMENTS AND AUTHORITIES**

This case turns on a single, dispositive issue: Officer Archer acted pursuant to his tribal authority when he arrested Walden, an Indian, in Indian country. This Court has long recognized that state law enforcement officers have no jurisdiction to arrest an Indian in Indian country. *See, e.g., Ross*, 905 F.3d at 1353. Because Officer Archer’s authority derived from his Tribal cross-commission status, he could not have acted under color of state law for the purposes of a 42 U.S.C. § 1983 claim. This same fact also places Officer Archer’s conduct outside the scope of his state employment under the Governmental Tort Claims Act (“GTCA”).

### **I. THE DISTRICT COURT PROPERLY GRANTED SUMMARY JUDGMENT IN FAVOR OF OFFICER ARCHER, AS HE WAS NOT ACTING UNDER THE COLOR OF STATE LAW**

Walden does not dispute that he cannot succeed on a 42 U.S.C. § 1983 claim against a tribal officer, nor does he dispute that the only reason Officer Archer had the jurisdiction to arrest Walden was due to his cross-commission status as a tribal officer. Walden only takes issue with the District Court’s determination that Officer Archer could not have been acting under color of state law when he arrested Walden **pursuant to his tribal authority**. (App. Vol. 2 at 226-229). Walden asserts that the District Court improperly considered where Officer Archer derived his authority, and that the District Court should instead have considered the authority under which he was purporting to act. (Aplt. Opening Br. at 14-15). Walden also argues that

Officer Archer was simultaneously acting under the color of state law and tribal law, and since he “exercised both powers,” he is subject to 42 U.S.C. § 1983 liability. (Aplt. Opening Br. at 16).

As a threshold matter “[s]tate courts generally have no jurisdiction to try Indians for conduct committed in ‘Indian country’” *McGirt v. Oklahoma*, 591 U.S. 894, 898 (2020) (citing *Negonsott v. Samuels*, 507 U.S. 99, 102-103 (1993)); *see also Ross v. Neff*, 905 F.2d 1349, 1353 (10th Cir. 1990) (“The Supreme Court has expressly stated that state criminal jurisdiction in Indian country is limited to crimes committed ‘by non-Indians against non-Indians . . . and victimless crimes by non-Indians.’”) (quoting *Solem v. Bartlett*, 465 U.S. 463, 465 n. 2 (1984) (citing to 18 U.S.C. § 13)). Since state officers generally lack jurisdiction to enforce state laws against Indians in Indian country different tribes, such as the Chickasaw Nation, have entered into cross-commission agreements that vest individual state law enforcement officers with the authority to enforce tribal law within tribal land **as tribal officers** (App. Vol. 1 at 97-103, 195-198).

In this case, the Chickasaw Nation Cross Commission Agreement vested Officer Archer with a tribal law enforcement cross-commission that empowered him to enforce Chickasaw Nation law within Chickasaw Nation Indian Country as a Lighthouse officer. (App. Vol. 1 at 97-100, 195-198). It is undisputed that Walden is a member of the Choctaw Nation, that this arrest occurred in Duncan, Oklahoma,

which is located in Indian country, and that Officer Archer had the power to arrest Walden only by virtue of the authority vested in him by the Chickasaw Nation. (App. Vol.1 at 36-37, 72-75, 97-102, 104, 128-29, 166-69, 201-02; App. Vol. 2 at 212-13, 315-16, 434). As such, Officer Archer was undoubtedly acting pursuant to the authority vested in him by the tribe.

Walden’s argument that Officer Archer simultaneously acted under color of state law ignores that Officer Archer possessed no state-derived authority over Walden and offers no coherent theory by which an officer could exercise “dual” authority when the officer’s power originated exclusively from the Tribe.

#### **A. Walden Cannot Establish That Officer Archer Acted Under the Color of State Law**

An officer acts under color of state law when exercising power “**possessed by virtue of state law** and made possible only because the wrongdoer is clothed with the authority of state law.” *West v. Atkins*, 487 U.S. 42, 49 (1988) (emphasis added) (quoting *United States v. Classic*, 313 U.S. 299, 326, 61 (1941)). The purpose of 42 U.S.C. § 1983 is to address “the unwillingness or inability of the state governments to enforce their own laws against those violating the civil rights of others.” *District of Columbia v. Carter*, 409 U.S. 418, 426 (1973). Title 42 U.S.C. § 1983 traces back to § 1 of the Civil Rights Act of 1871, enacted after the Civil War to address widespread failures by southern state governments to protect federal rights. *Id.* Section 1 of the Act, codified at 42 U.S.C. § 1983, was enacted to address state

officials’ refusal to enforce laws protecting federal rights. *Id.* at 426-27. Congress began to recognize that to have effective remedies for individuals whose constitutional rights were violated access to federal courts would be required, as reliance on state courts to vindicate federal rights had been ineffective. *Id.* at 428 (citing *Zwickler v. Koota*, 389 U.S. 241, 245 (1967)). Congress ultimately viewed § 1983 as a mechanism “to afford a federal right in federal courts because, by reason of prejudice, passion, neglect, intolerance or otherwise, state laws might not be enforced” and constitutional rights might be denied. *Id.* at 429 (quoting *Monroe v. Pape*, 365 U.S. 167, 180 (1961)).

Consistent with such a purpose, the Supreme Court has been clear that 42 U.S.C. § 1983 does not apply to conduct taken under color of non-state sovereign authority, such as those acting on behalf of the federal government or the District of Columbia. *Carter*, 409 U.S. at 424-425 (holding that the District of Columbia is not a “State or Territory” for the purposes of § 1983).

Against that backdrop, 42 U.S.C. § 1983’s focus on abuses of **state** authority shows that it was never intended to reach conduct carried out under an entirely separate sovereign, such as a tribal government. Consistent with this limitation, the Tenth Circuit has held that 42 U.S.C. § 1983 “is unavailable for persons alleging deprivation of constitutional rights under tribal laws.” *Burrell v. Armijo*, 456 F.3d 1158, 1174 (10th Cir. 2006). Further supporting this concept is the fact that Congress

enacted a different scheme to provide constitutional protections to Indians through the Indian Civil Rights Act of 1968 (ICRA), 25 U.S.C. §§ 1301–1303. The intention of ICRA is to “secur[e] for the American Indian the broad constitutional rights afforded to other Americans” while also promoting the “well-established federal policy of further Indian self-government.” *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 62 (1978) (quoting *Morton v. Mancari*, 417 U.S. 535, 551 (1974)). The ICRA framework provides a limited federal remedy, habeas corpus, in order to balance the interests of individuals and avoid undue interference with tribal self-governance. *Id.* at 64-68.

When one views the history of 42 U.S.C. § 1983 and Congress and the Supreme Court’s actions in limiting federal causes of action against tribal officers, the logical conclusion is that when an officer acts pursuant to his tribal authority, even if he is cross-commissioned, he does not act under color of state law for the purposes of 42 U.S.C. § 1983. This is particularly true considering that the officer’s authority to enforce laws against Indians on tribal land exists solely by virtue of the tribe’s grant of power. To find otherwise would sever § 1983 from its historical purpose by imposing liability where no state authority was exercised, effectively transforming every cross-commission into a basis for federal suit despite the officer’s actions being undertaken solely under tribal law. As such, a 42 U.S.C. §

1983 claim cannot succeed against Officer Archer since he was acting within the scope of the authority granted to him by the Chickasaw Nation.

**B. Walden’s Alternative Theories Do Not Create State Authority**

It is undisputed that Officer Archer only had the authority to arrest Walden due to his cross-commissioned status with the Chickasaw Nation. Despite this undisputed fact, Walden urges this Court to instead focus on what authority Archer was purporting to use when Officer Archer arrested Walden. (Aplt. Opening Brief at 13-15). He also asks this Court to find that Officer Archer could act under both state and tribal law. (Aplt. Opening Brief at 15-17). These positions are not supported by law.

**i. Apparent Authority Cannot Convert Tribal Authority Into State Authority**

Walden advocates that the “appearance” of authority is all that is needed for a 42 U.S.C. § 1983 claim, even for an Indian arrested in Indian country. (Aplt. Opening Brief at 13-15). However, the cases Walden relies on to advocate for this approach all address private versus state action and are not relevant to determining the authority under which Officer Archer was acting.

Walden first cites *Dossett v. First State Bank*, in which the Eighth Circuit reviewed jury instructions for a § 1983 conspiracy claim. 399 F.3d 940, 949 (8th Cir. 2005). The court held that the instructions were erroneous because they excluded from the scope of “under color of law” actions taken by officials who purported to

act within their official duties but were, in fact, acting outside those duties. *Id.* Walden also relies on *Haines v. Fisher*, a case involving officers who staged a mock robbery as a prank on a fellow officer, who then asserted constitutional claims against them. 82 F.3d 1503, 1508 (10th Cir. 1996). The Tenth Circuit affirmed summary judgment for the officers, concluding they were not acting under color of state law because they did not use their positions as police officers to carry out the prank and instead acted solely for personal reasons. *Id.*

These cases, in which courts were faced with the question of whether individuals were acting as state or private actors, are not applicable to the facts of this case. Walden's reliance on such cases ignores the fact that there is no question as to whether Officer Archer was acting pursuant to some authority; he quite plainly had authority. The question in this case is **where** that authority was derived from. In this case, Officer Archer's authority to arrest Walden was solely derived from his tribal commission. (App. Vol. 1, 36-37, 72-75, 97-102, 114-115, 128-29, 166-169, 195-198, 201-202; App. Vol. 2 at 213, 316). But for Officer Archer's tribal commission, it would have been unlawful for him to arrest Walden. *Ross*, 905 F.2d at 1353. As such, he was not exercising power possessed by state law but was acting pursuant to his power as a tribal officer and thus cannot be held liable under 42 U.S.C. § 1983.

Judge Wyrick correctly looked to the source of Officer Archer's authority when he determined that Officer Archer was acting under color of tribal law. (App. Vol. 2 at 480-488). In his Order, Judge Wyrick cited *Fernandes v. City of Broken Arrow*, in which a plaintiff sued individual officers who were members of a DEA task force and also police officers for Broken Arrow, claiming that these officers were acting in dual capacities under both state and federal law. Case No. 16-CV-0630-CVE-FHM, 2017 WL 471561 at \*3 (Feb. 3, 2017). Judge Eagen rejected this contention, as officers cannot exercise state and federal authority simultaneously. *Id.* As such, the color of law analysis depends on “power possessed by virtue of [the] law” actually invoked in the encounter. *Id.* The Northern District applied the Tenth Circuit’s reasoning in *United States v. Martin*, 163 F.3d 1212 (10th Cir. 1998). Under *Martin*, the dispositive indicators of a local officer’s sovereign identity were his federal deputation and his assistance in a federal investigation, not the source of his salary or employment. *Id.* at 1215. Because the officers in *Fernandes* were deputized DEA task force officers performing surveillance in their capacity as federal officers, the Northern District of Oklahoma held that they were acting as **federal officers**, not state officers, in the incident at issue. *Fernandes*, 2017 WL 471561 at \*3, Because the officers were acting as federal officers, there was no basis for a claim under 42 U.S.C. § 1983 against them. *Id.*

Applying the principles of *Fernandes* and *Martin* in this case, Judge Wyrick’s focus on **where** Officer Archer derived his authority during the incident at hand is correct. There is no question that without the grant of tribal authority from his Chickasaw Nation Lighthorse Commission, Officer Archer would not have had the authority to arrest Walden. (App. Vol. 1, 36-37, 72-75, 97-102, 114-115, 128-29, 166-169, 195-198, 201-202; App. Vol. 2 at 213, 316, 483). This lack of state authority means that Officer Archer’s conduct had to occur under tribal authority alone, and 42 U.S.C. § 1983 liability is foreclosed as a matter of law.

**ii. An Officer Cannot Simultaneously Exercise Tribal and State Authority**

Next, Walden challenges the holding that Officer Archer could not have acted under both authorities simultaneously. However, such a position is wholly unsupported, as Judge Wyrick noted in his Order. (See App. Vol. 2, at 484 (“[T]he Court has been incapable of finding any case law that stands for the proposition that an officer is capable of acting under state law and tribal law simultaneously.”)). *Fernandes v. City of Broken Arrow* is also instructive on this issue, as the Northern District of Oklahoma was faced with the issue of whether an officer could act under color of state and federal law simultaneously. 2017 WL 471561 at \*3. The Northern District of Oklahoma determined that while the officers had the power to exercise either state or federal authority, they could not do so simultaneously. *Id.* “In other words, [the officers] may act overall as dual agents, but their actions in any particular

case are made pursuant to, and possible by, the authority of the state or federal government.” *Id.* (emphasis in original).

In reaching this conclusion, the Northern District of Oklahoma relied on decisions of other federal courts on similar issues. For instance, the Northern District cited *Guerro v. Scarazzini*, a decision out of the Second Circuit, in which the Second Circuit noted that the civil claim against two officers who were federally deputized for their work with the FBI Joint Organized Crime and Drug Enforcement Task Force was properly brought as a *Bivens* action, not a 42 U.S.C. § 1983 claim. *Guerrero v. Scarazzini*, 274 Fed. Appx. 11, 12 n.1 (2d Cir. 2008). The Northern District cited numerous other decisions supporting its position that an individual cannot act under color of both state and federal law, including a Sixth Circuit case and a variety of district court cases. *Majors v. City of Clarksville*, 113 Fed. Appx. 659, 659 (6th Cir. 2004) (interpreting a plaintiff's 42 U.S.C. § 1983 claim against local officers acting as DEA task force agents as a *Bivens* claim); *Pike v. United States*, 868 F. Supp. 2d 667, 677–78 (M.D. Tenn. 2012) (holding that plaintiff's § 1983 claims against local officers assisting in a federal task force operation were “plainly *Bivens* claims”); *Bordeaux v. Lynch*, 958 F. Supp. 77, 84 & n.5 (N.D.N.Y. 1997) (holding that local officers assigned to DEA task force could not be sued under § 1983 because they were federal officers); *Amoakohene v. Bobko*, 792 F. Supp. 605, 608 (N.D. Ill. 1992) (holding that local officers arresting someone for a municipal

code violation incident to activities in connection with a DEA task force, of which the officers were members, did not act under color of state law).

There is no dispute that the only reason Officer Archer had any authority to arrest Walden was because of his tribal commission. (App. Vol. 1, 36-37, 72-75, 97-102, 114-115, 128-29, 166-169, 195-198, 201-202; App. Vol. 2 at 213, 316, 483). His arrest authority in this case arose solely from the Chickasaw Nation, and his conduct was possible only by virtue of tribal law. (App. Vol. 1 at 39-40; 131-133). Walden offers no authority suggesting that an officer can simultaneously exercise state and tribal power where the State itself has no jurisdiction over the offense or the individual involved. On the contrary, the reasoning in *Fernandes* and the federal cases it relies on illustrates a settled principle: an officer may hold dual commissions, but when he acts in a particular case, he acts pursuant to one sovereign's authority, and not both. *Fernandes*, WL 471561, at \*3 (collecting cases).

The only authority Walden provides this Court with to support his contention that Officer Archer can exercise dual state and tribal authority is *Bressi v. Ford*, 575 F.3d 891 (9th Cir. 2009) an out-of-circuit case with remarkably different facts than these. (App Brief, p. 16). But *Bressi* does not support such a proposition. In *Bressi*, a non-Indian sued four tribal officers under 42 U.S.C § 1983 after he was stopped and cited at a roadblock that the officers had erected on a state highway crossing into the Indian reservation. 575 F.3d at 893. In such scenarios, when tribal officers stop

individuals, they are limited to inquiring about whether they are Indian or non-Indian, and if they are non-Indian, they can detain the individual until state officers arrive. *Id.* at 896. However, without some form of state authorization, they cannot take any further action. *Id.* Thus, in *Bressi*, when the tribal officers' inquiries of the individual went beyond whether he was Indian or non-Indian, they began acting under the color of state law. *Id.* at 897.

*Bressi* does not support Walden's position that an officer can be simultaneously acting under the color of both tribal and state law. If anything, it further illustrates that it is the sovereign from which the officer is deriving his powers from at the moment of the alleged violation that is the authority the officer is acting under. The officers in *Bressi* were only liable under 42 U.S.C. § 1983 because they were exercising authority **granted** to them by state law **against a non-Indian**. *Id.* at 897. As such, the inverse must be true, meaning that Officer Archer cannot be said to be acting under state law when he was exercising authority granted to him by the tribes against an Indian.

Walden also relies on language from the Chickasaw Nation Law Enforcement Commission Agreement to claim that an officer cannot be divested of his status as an Oklahoma Police officer when enforcing tribal law. This statement ignores the direct language of the Agreement, which explicitly states that officers with Chickasaw Nation Law Enforcement Commissions are empowered to enforce

Chickasaw Nation law within Chickasaw Nation Indian Country as Chickasaw Nation Lighthorse Officers. (App. Vol. 1 at 98, 196). Additionally, Section 5 states: “the Federal Torts Claims Act (‘FTCA’) should address liability for claims arising from acts taken in the enforcement of Chickasaw Nation law within Chickasaw Nation Indian country. Additionally, Chickasaw Nation maintains insurance to address liability for claims arising from acts taken in the enforcement of Chickasaw Nation law within Chickasaw Nation Indian Country. . .” (App. Vol. 1 at 99, 197). The language of the agreement, when read as a whole, can only lead to the conclusion that Officer Archer was acting as a Chickasaw Nation Lighthorse Officer, not a City of Duncan Officer. As such, he was not acting under color of state law.

Finally, Walden tries to frame Officer Archer’s actions as enforcing Oklahoma law and as such, Officer Archer acted under color of state law. Again, this proposition ignores the fact that Officer Archer did not have any power to enforce Oklahoma laws against Walden, but Officer Archer did have the power to enforce tribal laws. (App. Vol.1 at 36-37, 72-75, 97-102, 104, 128-29, 166-69; App. Vol. 2 at 212-13, 315-16). Additionally, Walden mistakenly claims that Officer Archer filled out a state probable cause affidavit, and as such, he must have been acting under the color of state law. However, the probable cause affidavit was a Chickasaw Nation Probable Cause Affidavit, further supporting the conclusion that

Officer Archer was acting pursuant to his tribal commission. (App. Vol. 1 at 72-75, 166-169).

None of Walden's arguments change the fact that the only reason Officer Archer was able to arrest him was due to Officer Archer's status as a tribal officer. It was tribal law, not state law, that gave Officer Archer jurisdiction over Walden (an Indian) in Indian country. Walden fails to point to any authority that contradicts Judge Wyrick's reasoning. As such, this Court should affirm the District Court's determination that Officer Archer was acting pursuant to tribal law and thus, Walden cannot succeed on a 42 U.S.C. § 1983 claim against him.

**II. THE DISTRICT COURT CORRECTLY GRANTED SUMMARY JUDGMENT IN FAVOR OF THE CITY AS OFFICER ARCHER WAS NOT ACTING WITHIN THE SCOPE OF HIS EMPLOYMENT WITH THE CITY**

After correctly determining that Officer Archer was acting as a tribal officer, Judge Wyrick went on to find that his actions were outside the scope of the Oklahoma Governmental Tort Claims Act and that the City is therefore entitled to summary judgment. Since Judge Wyrick had the authority to maintain jurisdiction over Walden's state law claims under 28 U.S.C. § 1367(c), and he correctly determined that Officer Archer's actions were beyond the GTCA, Walden cannot maintain a claim against the City of Duncan.

**A. Judge Wyrick Had the Discretion to Rule on The State Law Issue**

28 U.S.C. § 1367(a) authorizes federal courts to hear state-law claims when those claims arise from the same case or controversy as the federal claims that establish original jurisdiction. Federal courts can decline to exercise this jurisdiction under certain circumstances outlined in 28 U.S.C. § 1367(c). However, the decision to do so is purely discretionary. *Carlsbad Tech., Inc. v. HIF Bio, Inc.*, 556 U.S. 635, 639 (2009). A district court's decision to exercise supplemental jurisdiction over state law claims is reviewed for an abuse of discretion. *Brown v. City of Tulsa*, 124 F.4th 1251 (10th Cir. 2025).

Walden asks this Court to find that the District Court could not have retained jurisdiction over the state law claims and that once it determined that it did not have jurisdiction over the federal claims, it was mandatory for it not to address the merits of the state law claims. This conclusion is contrary to the language of 28 U.S.C. § 1367 and Tenth Circuit precedent. Walden's reliance on *Griffith v. El Paso County* is misplaced. In *Griffith*, this Court faced a scenario in which the District Court of Colorado dismissed a plaintiff's ADA and Rehabilitation Act claims because she had named the wrong governmental entity, and thus the court lacked jurisdiction over the claims against El Paso County. 129 F.4th 790, 833-834 (10th Cir. 2025). Even after explicitly finding that it had no jurisdiction over these federal claims, the District Court of Colorado went on to address the merits of the ADA and

Rehabilitation Act claims. *Id.* at 833. It was this error that was reversible, as the specific finding of a lack of subject matter jurisdiction on that specific claim made it so the district court could not consider it. *Id.* at 835.

This is not the case before the Court today. This case was originally filed in the Western District of Oklahoma, based on federal question jurisdiction. (App. Vol. 1 at 10-11). The District Court then retained jurisdiction over Walden's state law claims via supplemental jurisdiction granted by 28 U.S.C. § 1367(a). Once Judge Wyrick dismissed the federal claims, he had the authority to retain jurisdiction over the state law claims in accordance with 28 U.S.C. § 1367(c). Unlike in *Griffith*, Judge Wyrick did not hold that he lacked subject-matter jurisdiction over the state law claims and then proceed to decide them on the merits. Judge Wyrick had subject-matter jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367(a), and he had the authority to retain that jurisdiction even after the federal claims were dismissed. 28 U.S.C. § 1367(c). Walden points to no authority that says otherwise. Walden also fails to show how Judge Wyrick's decision to maintain jurisdiction over the state law claims was an abuse of discretion.

### **B. The City is Not Liable Under The GTCA**

Walden's waiver argument is also unsupported. He claims that the City has waived any defense based on the cross-deputization of officers because it failed to

argue the issue until its Reply.<sup>6</sup> This statement mischaracterizes the City's argument and relies on a mischaracterization of case law. Walden first cites *Howard v. Ferrellgas Partners, L.P.* 748 F.3d 975, 981 (10th Cir. 2014) to support his contention that the City has waived this argument since it did not raise it until its Reply brief. However, the reasoning in *Howard* ultimately stemmed from the Tenth Circuit's holding in *Headrick v. Rockwell Int'l Corp.*, 24 F.3d 1272, 1278 (10th Cir. 1994), which held that issues and arguments that an appellant did not raise until its reply brief need not be addressed in compliance with their general rule that appellate courts should not entertain issues raised for the first time on appeal. *Hill v. Kemp*, 478 F.3d 1236, 1250-51 (10th Cir. 2007) (citing *Headrick v. Rockwell Int'l Corp.*, 24 F.3d 1272, 1278 (10th Cir. 1994)). Walden's claim that these cases hold that any argument not raised until a Reply brief at the district court level is waived is a misrepresentation of this Court's holdings and directly contradicts its precedent.

This Court has held that a district court can consider new arguments in a reply brief, but "if the court relies on new materials or new arguments in a reply brief, it may not forbid the nonmovant from responding to these new materials." *Pippin v. Burlington Res. Oil And Gas Co.*, 440 F.3d 1186, 1192 (10th Cir. 2006) (citing

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<sup>6</sup> Additionally, Walden knew this was an issue before the Court long before the City filed its Reply. The City had argued in its underlying motion that it could not be liable for the actions of Officer Archer, as he had not been acting under the color of state law. (App. Vol. 1 at 39-40). The issue also was also fully briefed in Officer Archer's Motion for Summary Judgment. (App. Vol. 1 at 131-33).

*Beaird v. Seagate Tech, Inc.*, 145 F.3d 1159-1165 (10th Cir. 1998). A district court's decision to consider new exhibits or arguments in a reply brief is reviewed for abuse of discretion. *Id.* In *Pippin*, the Tenth Circuit held that a district court did not abuse its discretion when it considered new exhibits attached to a summary judgment reply. *Id.* The deciding fact was that the nonmovant never requested leave to file a sur-reply, despite having more than six weeks to do so. *Id.* This Court rejected the argument that courts are not allowed to consider new materials at all under its precedent. *Id.* This Court affirmed that the reversible error only arises when a district court both relies on new material **and** affirmatively prevents the opposing party from responding. *Id.* Because the district court in *Pippin* did not affirmatively prevent the nonmovant from responding, she simply failed to seek leave to do so. *Id.* The consideration of new reply materials was entirely proper. *Id.*

The rule in *Pippin* squarely applies in this case. Walden never sought leave to file a sur-reply after the Appellees filed their replies. (App. Vol. 1 at 2-9). As such, any introduction of additional authority or argument in the City's reply brief does not constitute error. Additionally, Plaintiff's contention that the City cannot raise any exemptions based on the cross-deputization of officers mischaracterizes the nature of the City's argument. The City is not simply asserting one of the statutory exemptions from liability provided by the GTCA— it is raising a jurisdictional bar to liability based on the scope of the GTCA itself. Under the GTCA, sovereign

immunity is waived only for torts committed by employees acting within the scope of their employment on behalf of the State or a political subdivision of the State. *See* 51 O.S. § 152. When an employee acts on behalf of a tribal government or under tribal authority, that conduct falls outside the jurisdictional reach of the GTCA entirely. Thus, there is no waiver of immunity by the state because the conduct of the officers is not attributable to the state. The conduct is attributable to the tribe as the state lacks independent authority in these scenarios. *See Ross*, 905 F.2d at 1353 (“states [lack] independent authority to enforce their own laws over Indians on Indian land.”). Jurisdictional arguments such as this cannot be waived.

Now, turning to the merits of Walden’s argument, Walden’s contention that Judge Wyrick found factual inferences against him also must fail. Walden claims there is nothing in the record indicating that Officer Archer was not acting as a City of Duncan officer when he was enforcing tribal law, but this argument misunderstands the GTCA and the nature of Officer Archer’s authority.

Under the GTCA, a municipality, such as the City of Duncan, is only liable for torts committed by an “employee” acting “within the scope of employment.” *See* 51 O.S. § 152(6) (defining employee as a person “authorized to act [on] behalf of a political subdivision or the state); 51 O.S. § 152(13) (defining scope of employment as performance of duties within “the employee’s office or employment or of tasks lawfully assigned by a competent authority”). This statutory language is limiting and

indicates the City is only liable for acts performed pursuant to City-delegated authority. It is not liable for conduct undertaken solely under the authority of another sovereign.

Here, Walden's argument ignores the fundamental truth that a municipal police officer, such as Officer Archer, cannot exercise state or municipal authority when enforcing tribal law because no state or municipal "competent authority" has assigned the officer the duty of enforcing the Chickasaw Nation's criminal code. (See Section I(B), *supra*, pp. 23-31). In fact, case law is clear that the State cannot assign officers the duty of enforcing Chickasaw nation law. See *Ross*, 905 F.2d at 1353. At the time Officer Archer arrested Walden, he did so under Chickasaw law, pursuant to a commission granted by the Chickasaw Nation, not the City of Duncan. Enforcement of tribal law is a task assigned by the Tribe, and therefore it falls outside the duties of a City police officer as defined by § 152(13).

Finally, Walden's claim that there is no rule of law or anything in the record stating that a municipal police officer is acting outside the scope of his employment when enforcing tribal law blatantly ignores the plethora of law cited that supports the proposition that Officer Archer could not have been acting for both the City and the Tribe at the same time. (See Section I(B), *supra*, pp. 23-31). Judge Wyrick's conclusion that Officer Archer was not acting within the scope of his employment is supported by the record. Officer Archer was acting solely under Chickasaw

authority; he was not acting within the scope of his municipal employment as required for City liability under the GTCA. Accordingly, this Court should affirm the district court's determination that Walden has no viable GTCA claim against the City.

### **CONCLUSION**

The District Court did not err in finding that Officer Archer was acting under the color of tribal law, not under color of state law, when he arrested Walden (an Indian), on Indian land, pursuant to the powers granted to him by his cross-commissioned status. Additionally, the District Court was well within its discretion to maintain jurisdiction over the state law claims against the City and properly held that Officer Archer was not acting within the scope of his employment for the purposes of the GTCA.

WHEREFORE, Officer Christian Archer and the City of Duncan, Oklahoma, request that this Court affirms the District Court's Judgment for them on all claims asserted by Walden.

Officer Christian Archer and the City of Duncan join in Walden's request for oral argument.

Date: December 11, 2025

Respectfully submitted,

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**CERTIFICATES**

**Service.** I hereby certify that a copy of the foregoing **Appellee’s Brief** was served, on **December 11, 2025** via filing with the Clerk of Court using the CM/ECF System, on all counsel who are registered CM/ECF users and have entered their appearance in this appeal.

s/ Robert S. Lafferandre  
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***Type-Volume and Typeface Limitations.*** I hereby certify that:

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains **9,761** words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f); and

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s/ Robertt S. Lafferandre  
\_\_\_\_\_  
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Date: December 11, 2025