UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

EDUARDO HOLGUIN, Plaintiff, v. YSLETA DEL SUR PUEBLO, TIGUA TRIBAL POLICE DEPARTMENT, ERIKA AVILA, RAUL CANDELARIA, and OFFICERS JOHN AND JANE DOE, Defendants.	§ § § § § § § § § § §	Cause No. 3:21-CV-00067-DB

DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S ORIGINAL PETITION

COME NOW, Defendants Ysleta del Sur Pueblo, Tigua Tribal Police Department, Erika Avila, Raul Candelaria, and Officers John and Jane Doe (collectively "Defendants") and file this Motion to Dismiss the Original Petition filed by Plaintiff Eduardo Holguin ("Holguin") pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure and would respectfully show the Court as follows:

I.
INTRODUCTION

1. On February 1, 2021, Holguin filed his Original Petition in County Court at Law Number Six in El Paso County, Texas. (Docket No. 1). On March 15, 2021, Defendants removed the case to this Court under federal-question jurisdiction. (*Id.*). In his Original Petition, Holguin asserts a claim for gross negligence and a section 1983 claim against Defendants, claiming that they allegedly violated his rights under the Fourteenth Amendment of the U.S. Constitution because (i) tribal police officers conducted an unlawful traffic stop on an Indian reservation, (ii) tribal police officers issued a traffic citation to him for violating tribal laws, (iii) a tribal judge issued a summons for him to appear before a tribal court, and (iv) a tribal judge issued an order requiring him to pay a

monetary fee. (Pl.'s Orig. Compl. pp. 6-8). However, because Defendants have sovereign, official, and/or qualified immunity against Holguin's claims, the Court should dismiss the case.

II.
FACTUAL BACKGROUND

2. Holguin filed suit against Defendants, which consist of an Indian tribe and its tribal officers and law enforcement agency. Defendant Ysleta del Sur Pueblo (the "Tribe") is a "federally recognized [Indian] tribe" whose reservation territory is primarily situated in El Paso County, Texas (the "Reservation"). (Pl.'s Orig. Pet. p. 1). Defendant Tribal Police Department is the "law enforcement arm" of the Tribe. (*Id.* p. 2). Defendants Raul Candelaria and Erika Avila are tribal officers who, at all times, acted under color of tribal law. (*Id.*).

3. Holguin claims that Defendants acted grossly negligent and violated his constitutional rights during a routine traffic stop on the Reservation. (Pl.'s Orig. Pet. p. 3). Specifically, Holguin maintains that, on November 28, 2018, tribal police conducted a traffic stop at the intersection of Socorro and Zaragoza roads. (*Id.* p. 4). After he pulled over, Holguin alleges that a tribal police officer approached his vehicle and asked Holguin to identify himself. (*Id.*). In response, using "some colorful language," Holguin refused to identify himself and "rolled up his window" and drove home. (*Id.* p. 5). Approximately thirty minutes later, tribal police officers arrived at Holguin's home, which is presumably outside the Reservation, and left a "Civil Infraction Citation" on his front doorstep. (*Id.*). The Civil Infraction Citation revealed three Class C and one Class B infractions in violation of the Tribe's Traffic Code. (Defs.' Ex. A: Civil Infraction Citation).

4. Thereafter, on January 10, 2019, Holguin received a summons in the mail from the Tribal Court. (Pl.'s Orig. Pet. p. 6). The summons placed Holguin on notice that his presence was required on the Reservation before the Tribal Court on January 30, 2019, at 4:00 p.m. (Defs.' Ex. B: Summons). If Holguin failed to appear and defend these charges, the Tribal Court could assess a fine for contempt of court and enter a default judgment against him. (Pl.'s Orig. Pet. p. 6; Defs.' Ex. B:

Summons).

5. Despite receiving notice, Holguin failed to appear before the Tribal Court to defend himself against these traffic infractions. (Defs.' Ex. C: Default Judgment). Therefore, on January 30, 2019, Tribal Court Judge Enrique Granillo signed a civil infraction finding order. (*Id.*). In that order, the tribal judge found that Holguin failed to appear and entered a default judgment against him. (*Id.*). Because Holguin failed to appear and present a defense, the tribal judge found Holguin liable for each infraction and issued a $600 fine. (*Id.*). The tribal judge, moreover, imposed a one-year banishment to Holguin from the Reservation and suspended his driving privileges on the Reservation. (*Id.*). As a result of the entry of default judgment, the tribal judge entered a temporary vehicle impound order. (Defs.' Ex. D: Impound Order). Pursuant to the order, should Holguin operate any motor vehicle in the Reservation, the tribal police may impound his vehicle until Holguin pays the $600 fine and any required impound fees. (*Id.*). The temporary vehicle impound order "shall continue until such time as the [tribal] [c]ourt shall determine [c]ause as to why [the Order] should not issue." (*Id.*). The tribal judge determined that the order "may be rescinded only by [the tribal court] and failure to comply with [the temporary vehicle impound order] will result in tribal court sanctions." (*Id.*). Holguin alleges that these actions, all within the color of tribal law, are actionable under section 1983 and constitute violations of his constitutional rights to be free of unlawful stops without due process of law. (*See* Pl.'s Orig. Compl. pp. 6-8). However, because these allegations do not support any cognizable claims against Defendants, the Court should dismiss them as a matter of law.

III.
LEGAL STANDARD

A. RULE 12(b)(1)

6. In evaluating a challenge to subject-matter jurisdiction, the Court is free to weigh the evidence and resolve factual disputes so that it may be satisfied jurisdiction is proper. *See Montez v. Dep't of Navy*, 392 F.3d 147, 149 (5th Cir. 2004). In conducting its inquiry, the Court may consider:

(1) the complaint alone; (2) the complaint supplemented by undisputed facts; or (3) the complaint supplemented by undisputed facts plus the Court's resolution of disputed facts. *Id.* Dismissal is warranted if the plaintiff's allegations, together with any undisputed facts, do not establish the Court has subject-matter jurisdiction. *See Saraw P'ship v. United States*, 67 F.3d 567, 569 (5th Cir. 1995); *Hobbs v. Hawkins*, 968 F.2d 471, 475 (5th Cir. 1992). "When a Rule 12(b)(1) motion is filed in conjunction with other Rule 12 motions, the court should consider the Rule 12(b)(1) jurisdictional attack before addressing any attack on the merits." *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001).

B. RULE 12(b)(6)

7. Rule 8(a) of the Federal Rules of Civil Procedure requires a plaintiff's pleading to include "a short and plain statement of the claim showing that the pleader is entitled to relief." FED. R. CIV. P. 8(a)(2). While "the pleading standard Rule 8 announces does not require 'detailed factual allegations,' it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). If a plaintiff fails to satisfy Rule 8(a), the defendant may file a motion to dismiss the plaintiff's claims under Rule 12(b)(6) for "failure to state a claim upon which relief may be granted." FED. R. CIV. P. 12(b)(6).

8. To defeat a motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, a plaintiff must plead "enough facts to state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570. A claim is said to be plausible if the complaint contains "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 663 (citing *Twombly*, 550 U.S. at 556). Plausibility will not be found where the claim alleged in the complaint is based solely on legal conclusions or a "formulaic recitation of the elements of a cause of action." *Twombly*, 550 U.S. at 555. Nor will plausibility be found where

the complaint "pleads facts that are merely consistent with a defendant's liability" or where the complaint is made up of "naked assertions devoid of further factual enhancement." *See, e.g.*, *Iqbal*, 556 U.S. at 678. Plausibility, not sheer possibility or even conceivability, is required to survive a Rule 12(b)(6) motion to dismiss. *Twombly*, 550 U.S. at 556-557.

IV.
ARGUMENT

9. Pursuant to section 1983, Holguin alleges that Defendants violated his constitutional rights by allegedly conducting an unlawful stop and seizure and failing to afford him substantive and procedural due process under the Fourteenth Amendment of the U.S. Constitution. (Pl.'s Orig. Compl. pp. 6-8). Moreover, Holguin maintains that the Tribe has a custom and practice "designed and implemented toward the goal of seizing and confiscating personal property and vehicles." (*Id.* p. 8). According to Holguin, pursuant to this alleged custom and practice, the Tribe has made "hundreds of unlawful traffic stops . . . during the past years." (*Id.*). However, because Defendants have immunity, the Court should dismiss the case for lack of subject-matter jurisdiction.

A. NEITHER THE TRIBE NOR ITS OFFICIALS HAVE WAIVED THEIR SOVEREIGN, OFFICIAL, AND/OR QUALIFIED IMMUNITY

10. The Court should dismiss this case because the Tribe, its police department, and officials have immunity from suit.

11. Indian tribes have long enjoyed the status of "domestic dependent nations." *Cherokee Nation v. State of Georgia*, 30 U.S. (5 Pet.) 1, 8 (1831). As the Supreme Court has recognized, "Indian tribes are distinct, independent political communities, retaining their original natural rights in matters of local self-government. Although no longer possessed of the full attributes of sovereignty, they remain a separate people, with the power of regulating their internal and social relations." *E.g.*, *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55 (1978). "Federal courts have long acknowledged that Indian nations possess a unique status in our constitutional order." *Poodry v. Tonawanda Band of*

Seneca Indians, 85 F.3d 874, 880 (2d Cir. 1996). Indian tribes are distinct political entities retaining inherent powers to manage internal tribal matters. *See Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 16 (1831); *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 557 (1832).

12. As a matter of federal law, "Indian tribes are domestic dependent nations that exercise inherent sovereign authority." *See, e.g.*, *Kiowa Tribe of Okla. v. Mfg. Techs., Inc.*, 523 U.S. 751, 754 (1998); *see also Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 788 (2014) ("Indian tribes are domestic dependent nations that exercise inherent sovereign authority."); *Okla. Tax Comm'n v. Citizen Band Potawatomi Tribe of Okla.*, 498 U.S. 505, 509 (1991). "Not only is sovereign immunity an inherent part of the concept of sovereignty and what it means to be a sovereign, but 'immunity [also] is thought [to be] necessary to promote the federal policies of tribal self-determination, economic development, and cultural autonomy." *Breakthrough Mgmt. Grp., Inc. v. Chukchansi Gold Casino & Resort*, 629 F.3d 1173, 1177 (10th Cir. 2010) (quoting *Am. Indian Agric. Credit Consortium, Inc. v. Standing Rock Sioux Tribe*, 780 F.2d 1374, 1378 (8th Cir. 1985)).

13. Tribal sovereign immunity "predates the birth of the Republic." *Rhode Island v. Narragansett Indian Tribe*, 19 F.3d 685, 694 (1st Cir. 1994). "As sovereign powers, federally-recognized Indian tribes possess immunity from suit in federal court." *Native Am. Distrib. v. Seneca-Cayuga Tobacco Co.*, 546 F.3d 1288, 1292 (10th Cir. 2008) (citing *Berrey v. Asarco Inc.*, 439 F.3d 636, 643 (10th Cir. 2006); *see also* 25 C.F.R. § 83.2 (describing effect of federal recognition for tribes). However, tribal sovereign immunity may be abrogated by congressional enactment or waived by the tribe. *E.F.W. v. St. Stephen's Indian High Sch.*, 264 F.3d 1297, 1304 (10th Cir. 2001). Although "[a] tribe may waive its immunity, . . . such waiver 'cannot be implied but must be unequivocally expressed.'" *Rosebud Sioux Tribe v. Val–U–Const. Co. of South Dakota, Inc.*, 50 F.3d 560, 562 (8th Cir.1995), *cert. denied*, 516 U.S. 819 (1995); *see Auto–Owners Ins. Co. v. Tribal Court of the Spirit Lake Indian Reservation*, 495 F.3d 1017, 1020 (8th Cir. 2007) ("Even if an Indian tribe

waives its sovereign immunity, such a waiver does not automatically confer jurisdiction on federal courts."). As a result, absent either a clear waiver of immunity by the Tribe itself, or congressional abrogation of that immunity, the Tribe is immune from suit.

14. Furthermore, "[a] tribe's sovereign immunity extends to its agencies." *Ferguson v. SMSC Gaming Enterprise*, 475 F. Supp. 2d 929, 930–31 (D. Minn. 2007) (citing *Hagen v. Sisseton–Wahpeton Community College*, 205 F.3d 1040, 1044 (8th Cir. 2000); *see also Dillon v. Yankton Sioux Tribe Housing Auth.*, 144 F.3d 581, 583 (8th Cir. 1998). In addition, the tribe's sovereign immunity also may extend to tribal officials in their official capacity. *Baker Elec. Coop., Inc. v. Chaske*, 28 F.3d 1466, 1471 (8th Cir. 1994) (finding that, if the Tribe had the power to enact the law, then "the tribal officers are clothed with the Tribe's sovereign immunity[.]"); *see also Native Am. Distributing*, 546 F.3d at 1296 ("[A] tribe's immunity generally immunizes tribal officials from claims made against them in their official capacities."); *Cook v. AVI Casino Enterprises, Inc.*, 548 F.3d 718, 727 (9th Cir. 2008) ("Tribal sovereign immunity 'extends to tribal officials when acting in their official capacity and within the scope of their authority.'").

15. Here, Holguin has failed to demonstrate that either Congress or the Tribe has waived its sovereign immunity. Holguin maintains that the Court has subject-matter jurisdiction pursuant to article 1, section 19 of the Texas Constitution. Yet, neither the Texas nor the U.S. Constitutions apply to the Tribe. As noted by the U.S. Supreme Court, "[a]s separate sovereigns pre-existing the Constitution, tribes have historically been regarded as unconstrained by those constitutional provisions framed specifically as limitations on federal or state authority." *Santa Clara Pueblo*, 436 U.S. at 56; *see Kaul v. Battese*, No. 03-4203-SAC, 2004 WL 1732309 (D. Kan. July 27, 2004) (finding lack of subject-matter jurisdiction over plaintiff's section 1983 claims, as "'Indian tribes are not states of the union within the meaning of the Constitution, and the constitutional limitations on the states do not apply to tribes'"); *see also Poodry v. Tonawanda Band of Seneca Indians*, 85 F.3d 874, 881 (2d

Cir. 1996) (finding that "courts concluded that other provisions of the Bill of Rights as well as the Fourteenth Amendment do not constrain the powers of self-government enjoyed by Indian tribes"). Indeed, as is the case with Indian tribes, the Tribe, its agencies, and officers are exempted from constitutional provisions addressed specifically to State or Federal governments. *See, e.g.*, *Twin Cities Chippewa Tribal Council v. Minnesota Chippewa Tribe*, 370 F.2d 529, 533 (8th Cir. 1967); *N.L.R.B. v. Pueblo of San Juan*, 276 F.3d 1186, 1192 (10th Cir. 2002). "[T]he . . . Indian [tribes'] . . . claim to sovereignty long predates that of our own Government." *See McClanahan*, 411 U.S. at 172.

16. Moreover, Holguin contends that Defendants are "subject to the criminal and civil jurisdiction of the State of Texas" pursuant to 25 U.S.C. § 1321. (Pl.'s Orig. Pet. p. 3). Yet, contrary to Holguin's contention, this section is inapplicable. This section is simply a consent of the United States to "any State not having jurisdiction over criminal offenses committed by or against Indians in the areas of Indian country situated within such State." 25 U.S.C. § 1321(a). This is not a criminal case. There are no criminal offenses involved. Indeed, Holguin seeks compensatory damages arising from civil causes of action—not criminal offenses. Therefore, absent an express waiver by the Tribe or a congressional abrogation of immunity, the Court should dismiss this action for lack of subject-matter jurisdiction.

B. AS A MATTER OF COMITY, THE COURT SHOULD ABSTAIN FROM PRESIDING OVER THE CASE BECAUSE HOLGUIN FAILED TO EXHAUST HIS TRIBAL REMEDIES

17. Even if it has subject-matter jurisdiction, the Court should abstain from this case under the tribal exhaustion doctrine. Under the tribal exhaustion doctrine, as formulated by the Supreme Court in *National Farmers Union Insurance Co. v. Crow Tribe*, 471 U.S. 845 (1985), and *Iowa Mutual Insurance Co. v. LaPlante*, 480 U.S. 9 (1987), "when a colorable claim of tribal court jurisdiction has been asserted, a federal court may (and ordinarily should) give the tribal court precedence and afford it a full and fair opportunity to determine the extent of its own jurisdiction over

a particular claim or set of claims." *Ninigret Dev. Corp. v. Narragansett Indian Wetuomuck Housing Auth.*, 207 F.3d 21, 31 (1st Cir. 2000); *see also Bowen v. Doyle*, 230 F.3d 525, 529 (2d Cir. 2000) ("when the jurisdiction of the tribal court is challenged, 'the Tribal Court itself' must be permitted to determine the issue 'in the first instance.'") (quoting *National Farmers*, 471 U.S. at 855); *Basil Cook Enters., Inc. v. St. Regis Mohawk Tribe*, 117 F.3d 61, 65 (2d Cir. 1997). Thus, the tribal exhaustion rule holds that tribal courts, which "play a vital role in tribal self-government," must be permitted the first opportunity to resolve challenges to their jurisdiction without federal court interference. *Iowa Mutual*, 480 U.S. at 14; *Tillett v. Lujan*, 931 F.2d 636, 640 (10th Cir. 1991) (finding that "as a matter of comity, a federal court should not exercise jurisdiction over cases arising under its federal question or diversity jurisdiction, if those cases are also subject to tribal jurisdiction, until the parties have exhausted their tribal remedies.").

18. "Tribal authority over the activities of non-Indians on reservation lands is an important part of tribal sovereignty. Civil jurisdiction over such activities presumptively lies in the tribal courts unless affirmatively limited by a specific treaty provision or federal statute." *See, e.g., Iowa Mut. Ins. Co.*, 480 U.S. at 18 (citations omitted). The Supreme Court has repeatedly recognized that tribal courts have inherent power to exercise civil jurisdiction over non-Indians in disputes affecting the interests of Indians which are based upon events occurring on a reservation. *See, e.g., Montana v. United States*, 450 U.S. 544, 566 (1981) (citations omitted). "The power to hear and adjudicate disputes arising on Indian land is an essential attribute of that sovereignty." *Wks. Const., Inc. v. Oglala Sioux Hous. Auth.*, 797 F.2d 668, 673 (8th Cir. 1986). Whether tribal officers violated the civil rights of a non-Indian traveling on the reservation unquestionably has a direct effect on the political integrity and welfare of the Tribe. *See, e.g., Stanko v. Oglala Sioux Tribe*, 916 F.3d 694, 699–700 (8th Cir. 2019); *see also Evans v. McKay*, 869 F.2d 1341, 1345–46 (9th Cir. 1989).

19. Here, Holguin attacks the Tribal Court's jurisdiction. Despite claiming that Defendants

deprived him of procedural and substantive due process, Holguin chose not to appear before the Tribal Court. Although he acknowledged receiving the summons from the Tribal Court ordering him to appear in court, Holguin inexcusably failed to appear and defend the charges against him. (Pl.'s Orig. Pet. p. 6; Defs.' Ex. B: Summons). At that time, Holguin could have argued to the Tribal Court, as he does now for the first time, that he was "deprived of his right to contest the confiscation of his property through a forfeiture proceeding, or other proceeding that would provide a fair hearing and due process of law." (Pl.'s Orig. Pet. p. 8). He complains that the Tribal Court "issued an open-ended Court order [that] authorizes [tribal police] to deprive [him] of procedural due process in violation of the Fourteenth Amendment." (*Id.* pp. 6, 8). However, even though Holguin failed to appear in Tribal Court, Holguin can still appear before Tribal Court to rescind the order if he can show "Cause as to why [the Order] should not issue:"

> That this order may be rescinded only by this Court and failure to comply with this order will result in tribal court sanctions.
>
> **IT IS SO ORDERED** this 30th day of January 2019.
>
> Tribal Court Judge
> Ysleta Del Sur Pueblo

* * *

> That this Order of Restraint shall continue until such time as the Court shall determine Cause as to why this Restraint should not issue, and/or a date specified by the Court, the Court shall continue this Restraint.

(Defs.' Ex. D: Impound Order).

20. Given Holguin's current ability to show cause in Tribal Court, the Court should dismiss this suit until Holguin exhausts the Tribal Court's jurisdiction. Holguin should not be allowed to circumvent the Tribal Court's jurisdiction. Even though Holguin is a non-Indian, "Indian tribes retain inherent sovereign power . . . to exercise civil authority over the conduct of non-Indians . . .

within its reservation when that conduct threatens or has some direct effect on . . . the health or welfare of the tribe." *Montana*, 450 U.S. at 565-66. By engaging in reckless driving, evading tribal police, and endangering the tribal members on the Reservation, the Tribal Court has jurisdiction over Holguin's claims. Without more, the Court should dismiss this case under principles of comity.

C. HOWEVER, EVEN ASSUMING THE COURT EXERCISES JURISDICTION OVER THIS CASE, IT SHOULD DISMISS HOLGUIN'S SECTION 1983 CLAIMS BECAUSE THEY DO NOT APPLY TO CLAIMS UNDER COLOR OF TRIBAL LAW

21. Even if jurisdiction exists, Holguin has still failed to allege cognizable claims under section 1983. Each claim raised by Holguin is based on actions Defendants took under color of tribal law. Indeed, Holguin complains (i) that tribal police officers conducted an unlawful traffic stop on the Reservation, (ii) that they issued a traffic citation for violating tribal laws, (iii) that they issued a summons for him to appear before a tribal court, and (iv) that he received an order from a tribal judge requiring him to pay a monetary fee to the Tribe and face impoundment of his vehicle if he unlawfully entered the Reservation. (*See* Pl.'s Orig. Compl. pp. 6-8). However, contrary to Holguin's allegations, section 1983 only applies to persons acting under color of *state* law. Because Holguin's complaints relate to actions committed by Defendants exclusively under color of *tribal* law, the Court should dismiss these claims.

1. Section 1983 does not apply to Indian tribes or their officials

22. The United States Supreme Court and several federal courts have categorically held that section 1983 does not apply to tribes. *See, e.g., Inyo Cnty., Cal. v. Paiute–Shoshone Indians of the Bishop Community of the Bishop Colony*, 538 U.S. 701, 704 (2003) ("The parties and, as amicus curiae, the United States agree that a Native American Tribe, like a State of the United States, is not a 'person' subject to suit under 42 U.S.C. § 1983."). Indeed, "no action under 42 U.S.C. § 1983 can be maintained in federal court for persons alleging deprivation of constitutional rights under color of *tribal law*." *See, e.g., R.J. Williams Co. v. Fort Belknap Hous. Auth.*, 719 F.2d

979, 982 (9th Cir. 1983) (emphasis added); *Burrell v. Armijo*, 456 F.3d 1159, 1174 (10th Cir. 2006) ("A [section] 1983 action is unavailable 'for persons alleging deprivation of constitutional rights under color of tribal law.'"); *McKinney v. State of Okl., Dep't of Human Servs., Shawnee OK*, 925 F.2d 363, 365 (10th Cir. 1991) (concluding "that the actions of the Director of Health Services for the Citizen Band Pottawatomie Tribe were not under color of state law for the purposes of maintaining plaintiff's suit against him under 42 U.S.C. § 1983"); *Hester v. Redwood Cty.*, 885 F. Supp. 2d 934, 948–49 (D. Minn. 2012) (finding that plaintiff's claims against Indian tribe are untenable because "Indian tribes are not 'persons'" under section 1983).

23. Furthermore, section 1983 does not apply to tribal officers and agents acting under color of tribal law. *See, e.g., Holtz v. Oneida Airport Hotel Corp.*, 826 F. App'x 573, 575 (7th Cir. 2020) ("When they are enforcing tribal laws or managing tribal affairs, neither tribal officers [nor] agents . . . act under color of state law."); *Charland v. Little Six, Inc.*, 112 F. Supp. 2d 858, 866 (D. Minn. 2000), *aff'd*, 13 Fed. Appx. 451 (8th Cir. 2001); *Toineeta v. Andrus*, 503 F. Supp. 605, 608 (D.C.N.C. 1980) ("[The] Eastern Band of Cherokee Indians is not a municipal corporation or any other agency of the State of North Carolina and that as a matter of law the Indian Defendants are not state employees nor were they acting under color of state law at the times alleged in the complaint," and it "therefore follows that the complaint does not state a cause of action under 42 U.S.C. § 1983 upon which this Court can grant relief."). The same holds true in this case.

24. At all relevant times, the Tribe and its officers acted under color of tribal law. On November 28, 2018, Holguin was on the Reservation driving westbound on the 9100 block of Socorro Road. Because he was using his cell phone while driving on the Reservation, a tribal police officer initiated her emergency lights and conducted a traffic stop. (Pl.'s Orig. Pet. p. 4). In doing so, the tribal police cited Holguin for violating *tribal*—not state—law. Indeed, as seen by the civil infraction citation, this civil offense violated sections 6.8.350 and 6.8.080 of the Tribe's Transportation Code

for reckless driving and use of a cell phone while operating a motor vehicle. (Defs.' Ex. A: Civil Infraction Citation).

25. After Holguin eventually pulled over, the tribal police officer asked Holguin to present proper identification. In response, using "some colorful language," Holguin refused to identify himself and "rolled up his window" and drove "straight home." (Pl.'s Orig. Pet. p. 5). Based on Holguin's actions, the tribal police officer cited him for evading arrest and failure to present identification, which are also in violation of sections 6.8.300 and 4.6.100 of the Tribe's Transportation Code. (Defs.' Ex. A: Civil Infraction Citation). Thereafter, tribal police left the traffic citation at Holguin's home to notify him of his tribal civil infractions. (Pl.'s Orig. Pet. p. 5).

26. On January 10, 2019, following the issuance of this traffic citation, Holguin received a summons from the Tribal Court ordering him to appear on January 30, 2019, at the Reservation to defend these charges. (Defs.' Ex. B: Summons). When Holguin failed to appear, the Tribal Court entered a default judgment, issued a $600 fine, banished Holguin for one year from the Reservation, and ordered Holguin's vehicle to be impounded if he entered the Reservation. (Defs.' Ex. C: Default Judgment). All of these actions were done under color of tribal law.

27. Contrary to Holguin's allegations, at no time did Defendants act under color of state law. Based on his Original Petition, Holguin admits that the Tribe is "a federally recognized tribe" with a "reservation territory" in El Paso County. (Pl.'s Orig. Pet. p. 2); *see Holguin v. Ysleta Del Sur Pueblo*, 954 S.W.2d 843, 847 (Tex. App.—El Paso 1997, pet. denied); *see also Ysleta del Sur Pueblo v. Laney*, 199 F.3d 281, 283 (5th Cir. 2000). He further admits that the Tribe's police department is the "law enforcement arm of the [Tribe]." (*Id.*). Holguin also admits that Defendants Raul Candelaria and Erika Avila are "employed by the [Tribe's] Police Department." (*Id.*). Indeed, nowhere in his Original Petition does Holguin allege that the Tribe and its officers have joint or concurrent jurisdiction with the State of Texas, City of Socorro, or City of El Paso to issue traffic

citations under color of state law. Thus, based on Holguin's admissions, the Tribe and its officials are Indian actors who, at all relevant times, acted under color of tribal law. Because section 1983 does not apply to persons acting under tribal law, the Court should dismiss all section 1983 claims.

D. PLAINTIFF'S SECTION 1983 AND GROSS NEGLIGENCE CLAIMS ARE BARRED BY THE APPLICABLE TWO-YEAR STATUTE OF LIMITATIONS

28. Nevertheless, even assuming that section 1983 applies to tribes and their Indian officials, Holguin's section 1983 claims are barred by the applicable statute of limitations.

1. Section 1983

29. "Section 1983 does not prescribe a statute of limitations." *Heilman v. City of Beaumont*, 638 F. App'x 363, 366 (5th Cir. 2016). Instead, "[t]he statute of limitations for a suit brought under [section] 1983 is determined by the general statute of limitations governing personal injuries in the forum state." *Piotrowski v. City of Hous.*, 237 F.3d 567, 576 (5th Cir. 2001); *see also Price v. City of San Antonio, Tex.*, 431 F.3d 890, 892, 894 (5th Cir. 2005) ("The limitations period for a claim brought under section 1983 is determined by the general statute of limitations governing personal injuries in the forum state."); *LeBlanc v. City of Haltom City*, No. 4:10-CV-812-A, 2011 WL 2149908, at *4 (N.D. Tex. May 31, 2011). As the forum state, Texas has a two-year statute of limitations for personal injury claims. TEX. CIV. PRAC. & REM. CODE § 16.003(a); *Piotrowski*, 237 F.3d at 576. For these claims, the limitations period begins to run when the plaintiff "knows or has reason to know of the injury which is the basis of the action." *Burrell v. Newsome*, 883 F.2d 416, 418 (5th Cir. 1989) (citations omitted); *see also Jackson v. Johnson*, 950 F.2d 263, 265 (5th Cir. 1992). The plaintiff must know of the injury and the causal connection between the defendant and the injury. *Piotrowski*, 237 F.3d at 576.

30. Here, Holguin complains about three distinct episodes. First, he complains that, on November 28, 2018, tribal police unlawfully stopped and cited him after he was driving on Socorro Road on the Reservation. (Pl.'s Orig. Pet. p. 4). Second, Holguin further complains that, on January

10, 2019, he received a summons from a court "located on tribal land" to "appear to defend these charges." (*Id.* at p. 6). Finally, Holguin complains that, on January 30, 2019, "Tribal Court Judge Enrique Granillo signed a temporary vehicle impound order" based on a finding that Holguin was "liable of violating a code or law of the [Tribe] and was 'civilly' assessed through the Tribal Court." (*Id.*). However, because Holguin filed suit on February 1, 2021, all of these claims are past the two-year statute of limitations under Texas law.

31. There is a two-year statute of limitations for an unlawful stop and seizure. *See, e.g.*, *Humphreys v. City of Ganado, Tex.*, 467 F. App'x 252, 255 (5th Cir. 2012). Based on the Original Petition, Holguin claims that the alleged unlawful stop took place on November 28, 2018—the date Holguin was allegedly stopped by tribal police. That same day, according to Holguin, tribal police entered his property and "unreasonably and unlawfully detained [him] in his home for several hours." (Pl.'s Orig. Pet. p. 7). Again, a section 1983 cause of action accrues when the plaintiff knows or has reason to know of the injury which forms the basis of the action. *Price*, 431 F.3d at 892. Holguin knew, or at the very least should have known, of any injury resulting from Defendants' alleged unlawful stop as of November 28, 2018, when this incident took place. Thus, Holguin's section 1983 claim for an alleged unlawful stop is barred by the statute of limitations because Holguin filed suit after November 28, 2020.

32. The two-year statute of limitations also applies to substantive and procedural due process claims under section 1983. *See Smith v. Acevedo*, 2012 WL 1889416, at ** 6-7 (5th Cir. 2012) (limitations period on claim for denial of due process in Texas is two years); *see also Hurd v. Univ. of Tx. Health Sci. Ctr. at S.A.*, No. SA-09-CA-645-FB, 2012 WL 13076603, at *5 (W.D. Tex. Aug. 17, 2012). Based on his Original Petition, Holguin maintains that Defendants deprived him of "his right to contest the confiscation of his property through a forfeiture proceeding or other proceeding that would provide a fair hearing and due process of law." (Pl.'s Orig. Pet. p. 8).

Specifically, he complains that Defendants[1] "issued an open-ended Court order [that] authorizes [tribal police]" to deprive him procedural and substantive due process. (*Id.* at pp. 7-8). As previously stated, the limitations period begins to run when the plaintiff "knows or has reason to know of the injury which is the basis of the action." *Burrell*, 883 F.2d at 418. The plaintiff must know of the injury and the causal connection between the defendant and the injury. *Piotrowski*, 237 F.3d at 576. Here, Holguin knew, or should have known, that Defendants allegedly violated his procedural and substantive due process rights when he received the summons on January 10, 2019 or, at the latest, on January 30, 2019, when the Tribal Court issued the temporary vehicle impound order. (*See* Pl.'s Orig. Pet. p. 6; *see also* Defs.' Ex. D: Impound Order).). At either point, Holguin knew, or should have known, about the nature of the Tribe's judicial proceeding. However, because Holguin filed suit more than two years later, these claims are beyond the statute of limitations.

2. Gross Negligence

33. Holguin's gross negligence claim is also barred by the statute of limitations. In Texas, a claim for gross negligence has a two-year statute of limitations. *See, e.g.*, *Morriss v. Enron Oil & Gas Co.*, 948 S.W.2d 858, 869 (Tex. App.—San Antonio 1997, no writ). Holguin only includes a formulaic recitation of the elements of gross negligence inconsistent with *Iqbal* and *Twombly*. However, despite the vagueness of his claim,[2] all of the events giving rise to his

[1] For his procedural due process claim, Holguin pleads this cause of action against Defendants Tatum, Huffaker, and Hobb; however, they are not named defendants in this case. (*See* Pl.'s Orig. Pet. pp. 7-8).

[2]Not only is Holguin's gross negligence claim past the statute of limitations, it also fails to comply with the plausibility pleading standard in *Iqbal* and *Twombly*. Holguin's gross negligence claim constitutes merely a recitation of the elements for gross negligence without any facts establishing his claim. Simply labeling part of the Original Petition "gross negligence" with a recitation of the elements is nothing more than a mere "label[ ] and conclusion [ ]" of the sort rejected by the Supreme Court. *Watson v. Citimortgage, Inc.*, 814 F. Supp. 2d 726, 736 (E.D. Tex. 2011) (citing *Twombly*, 550 U.S. at 555). Further, "[t]he threshold inquiry regarding a gross negligence claim is whether a legal duty existed." *RT Realty, L.P. v. Tex. Utils. Elec. Co.*, 181 S.W.3d 905, 914 (Tex. App.—Dallas 2006, no pet.) (citing *Thapar v. Zezulka*, 994 S.W.2d 635, 637 (Tex. 1999)).

complaint occurred prior to January 30, 2019. Without more, the Court should also dismiss Holguin's gross negligence claim because it is barred by the two-year statute of limitations.

E. EVEN ASSUMING THE COURT HAS SUBJECT-MATTER JURISDICTION, HOLGUIN HAS FAILED TO STATE A CLAIM UPON WHICH RELIEF COULD BE GRANTED

34. Nevertheless, even assuming the Court can exercise subject-matter jurisdiction, the Court should still dismiss this case because Holguin has failed to state a claim upon which relief may be granted.

1. Defendants Had the Legal Authority to Stop and Seize Holguin

35. Holguin lacks a cognizable claim for an unlawful stop and seizure.[3] Defendants have the right to stop non-Indians for traffic violations on the Reservation and to determine their own jurisdiction.

36. State and federal courts have held that state and tribal police officers have the right to stop and seize drivers suspected of violating the law. In *State v. Schmuck*, 850 P.2d 1332, 1337 (Wash. 1993), the Washington Supreme Court held that a tribal police officer had the authority to stop a suspect to investigate a possible violation of the tribe's traffic code and determine whether the suspect was an Indian. In that case, a tribal police officer observed a speeding truck within the Indian reservation. *Id.* "When he first saw the truck, [the tribal police officer] had no means of ascertaining whether the driver was an Indian." *Id.* The court found that:

> Only by stopping the vehicle could [the tribal police officer] determine whether the driver was a tribal member, subject to the jurisdiction of the Tribe's traffic code. The alternative would put tribal officers in the impossible position of being unable to stop any driver for fear they would make an unlawful stop of a non-Indian. Such a result would seriously undercut the Tribe's ability to enforce tribal law and would render the traffic code virtually meaningless. It would also run contrary to the well-established

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Holguin does not allege in his Original Petition a legal duty owed by Defendants. Because "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice, the Court should dismiss this claim. *Iqbal*, 129 S. Ct. 1949.

[3]The Tribe does not have a criminal code—only a civil infractions code, which applies apply to tribal members and non-members.

federal policy of furthering Indian self-government.

Id. (quoting *Santa Clara Pueblo*, 436 U.S. at 62) (internal quotation marks omitted). Accordingly, the Washington Supreme Court found the traffic stop lawful.

37. Relying on *Schmuck*, the Ninth Circuit reached a similar conclusion. In *United States v. Patch*, 114 F.3d 131, 133–34 (9th Cir. 1997), the court considered whether a state police officer may stop and seize a driver in Indian Country suspected of violating state traffic laws. There, a portion of the Arizona state highway crossed an Indian reservation. *Id.* at 133. Although state police had the right to arrest non-Indians on the reservation, it lacked the authority to arrest tribal members. *Id.* After a state police officer witnessed a driver tailgating, he activated his signal lights and attempted to stop the driver. *Id.* at 132. Ignoring the signal lights, the driver, who was a tribal member, failed to stop, believing that the state police officer lacked the authority to arrest him. *Id.* at 132-33. Once the driver stopped, he got off his vehicle and pushed the police officer resulting in a conviction and fine for simple assault. *Id.* The driver challenged his conviction, claiming that the state police officer lacked the legal authority to stop him. *Id.*

38. The Ninth Circuit held that the state police officer had the legal authority to stop the driver to ascertain whether he was a tribal member. *Id.* at 133. In reaching this conclusion, the court found that, "[a]s a practical matter, without a stop and inquiry, it is impossible for an Arizona officer to tell who is operating an offending vehicle." *Id.* at 133-34. Relying on *Terry v. Ohio*, the court acknowledged that, "consistent with the Fourth Amendment, a police officer could stop a suspect to investigate suspicious circumstances [and] . . . may make brief stops of suspicious individuals in order to determine their identity or to obtain more information." *Id.* at 134 (quoting *Terry v. Ohio*, 392 U.S. 1 (1968); *Adams v. Williams*, 407 U.S. 143, 146 (1972)). "Like the stop in *Terry*, its purpose would further a legitimate law enforcement objective: to determine whether the suspect was a tribal member." *Id.* Because the state police officer was unaware that the suspect

was a tribal member, the officer could not know whether he had jurisdiction to proceed. *Id.* Therefore, the court found the traffic stop permissible.

39. Consistent with *Schmuck* and *Patch*, the tribal police officers had the legal authority to stop and seize Holguin. Indeed, as admitted by Holguin, the tribal police asked him to identify himself and "provide proof of his identity." (Pl.'s Orig. Pet. p. 4). Yet, Holguin concedes that he "refused the [tribal police's] demand" and, "with colorful language," told the tribal police officer that "she had no authority to perform a pretextual investigatory stop." (*Id.* pp. 4-5; *see* Defs.' Ex. E: YDSP Report). By refusing to identify himself, Holguin precluded tribal police to determine whether he was a tribal member. Because the tribal police had the legal authority to conduct the traffic stop to, at a minimum, determine whether Holguin was a tribal member, Holguin has failed to state a claim upon which relief could be granted.

2. Defendants Afforded Holguin Procedural and Substantive Due Process

40. Furthermore, Holguin mistakenly claims that Defendants violated his substantive and procedural due process rights. However, his claims are contradicted by his own Original Petition.

41. The Fourteenth Amendment prohibits the government from depriving "any person of life, liberty, or property, without due process of law." U.S. CONST. amend. XIV. This guarantee affords procedural protections. *E.g.*, *Daniels v. Williams*, 474 U.S. 327, 331–32 (1986). The government must give reasonable notice to an individual of its intention to deprive him of life, liberty, or property. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313–15 (1950). It also must provide him with a meaningful opportunity to be heard. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

42. To state a claim under section 1983 for violation of due process, a plaintiff "must show that they have asserted a recognized 'liberty or property' interest within the purview of the Fourteenth Amendment, and that they were intentionally or recklessly deprived of that interest,

even temporarily, under color of state law." *Griffith v. Johnston*, 899 F.2d 1427, 1435 (5th Cir. 1990) (citations omitted). Yet, as evidenced by the traffic citation and the Tribal Court's order, Defendants never acted under color of state law. Moreover, despite the temporary vehicle impound order, Holguin does not allege that Defendants did, in fact, seize his vehicle; therefore, he has not been deprived of any property interest. His request for a forfeiture proceeding is unfounded. Here, the Tribal Court only exercised civil jurisdiction and had the right of civil forfeiture over actions committed on the Reservation. (*See* Defs.' Ex. A: Civil Infraction Citation); *see, e.g., Scott v. Doe*, 199 Wash. App. 1039 (2017) (holding that tribal court can exercise *in rem* civil proceeding for forfeiture against non-tribal member).

43. The Tribe afforded Holguin the right to notice and a meaningful opportunity to be heard, which is the "core of due process." *LaChance v. Erickson*, 522 U.S. 262, 266 (1998) (citing *Cleveland Bd. Of Ed. V. Loudermill*, 470 U.S. 532, 542 (1985)). As admitted by Holguin, the Tribal Court issued a summons to him on or about January 10, 2019. (Pl.'s Orig. Pet. p. 6). Holguin acknowledges receiving the summons. *Id.* He knew he had to appear before the Tribal Court of the Ysleta del Sur Pueblo for a hearing on January 30, 2019. *Id.* Holguin was aware that the Tribal Court was located on tribal land. *Id.* Moreover, as acknowledged by Holguin, the summons stated that the Tribal Court could enter a default judgment against him "if he failed to appear to defend these charges." *Id.* The summons also indicated that Holguin could "bring any papers or documents, which [would] assist [him] in [his] defense." (Defs.' Ex. B: Summons). The summons further notified Holguin of his right to "bring with [him] any witness(es) to testify in [his] behalf or [he could] also submit a list of witnesses to be subpoenaed that [he] wish[ed] to testify in [his] behalf." *Id.* Holguin also had the right to appear on his own or with legal representation. *Id.* Yet, despite receiving notice and having an opportunity to be heard, Holguin opted not to appear before the Tribal Court.[4]

[4]Lastly, Holguin claims that the Tribe engaged in the custom and practice of using its police force

Therefore, not only are Defendants immune, Holguin has also failed to state a cognizable claim for violations of procedural and substantive due process.

V.
REQUEST FOR RELIEF

Accordingly, for these reasons, Defendants Ysleta del Sur Pueblo, Tigua Tribal Police Department, Erika Avila, Raul Candelaria, and Officers John and Jane Doe respectfully request the Court to grant their Motion to Dismiss Plaintiff's Original Petition; dismiss the case for lack of subject-matter jurisdiction and/or for failure to state a claim upon which relief may be granted; and grant Defendants such other and further relief, at law or in equity, to which Defendants may be justly entitled.

Respectfully submitted,

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to conduct unlawful traffic stops and seize personal property. As previously noted, because section 1983 does not apply to the Tribe or its tribal police, they are immune. *See R.J. Williams Co.*, 719 F.2d at 982. However, even if section 1983 applies, Holguin does not cite any tribal rule, law, policy, regulation, practice, or custom to plausibly substantiate his claim. He vaguely claims that "hundreds of unlawful traffic stops were made during the past years," but there are no plausible factual allegations to support this unfounded claim. *See Twombly*, 550 U.S. at 555. Moreover, Holguin repeatedly claims that Defendants engaged in a conspiracy; however, he must prove that Defendants acted under color of state law. *See Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 150-52 (1970). Yet, as noted before, Defendants acted under color of tribal law and are immune. In addition, there are no plausible allegations of an express or implied agreement between Defendants or the intent to deprive Holguin of his constitutional rights. *Ricks v. City of Pomona*, No. 18CV07862DDPPLAX, 2019 WL 296199, at *6 (C.D. Cal. Jan. 23, 2019). Accordingly, these claims fail.

CERTIFICATE OF SERVICE

I hereby certify that I filed this document electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means as more fully reflected on the Notice of Electronic Filing on this 22nd day of March, 2021:

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