

**IN THE UNITED STATES DISTRICT COURT
FOR THE 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.

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EP-21-CV-00067-DB

PLAINTIFFS MOTION TO REMAND

TO THE HONORABLE JUDGE BRIONES:

COMES NOW, Plaintiff Eduardo Holguin (“Plaintiff” or “Mr. Holguin”) to file his Motion to Remand and respectfully request that this Court reject Defendants Ysleta Del Sur Pueblo, Tigua Tribal Police Department, Erika Avila, Raul Candelaria, and Officers John and Jane Doe (collectively “Defendants”) improper basis for Removal, remand the case to state court, and award Plaintiff attorney fees for their baseless motion. In this regard, Plaintiff would respectfully show the Court as follows:

**I.
INTRODUCTION**

This is not a gambling case. This case is about casino security operating off-reservation as an **unlicensed police force** patrolling Texas roads to perform pretextual investigative stops, conduct illegal searches and seizures, and issue criminal citations disguised as “civil infractions.” Afterward, non-tribal citizens (like Plaintiff) are called to answer before an **improperly constituted tribal court** and dragged into a kangaroo court proceeding, before an unqualified

judge, where they are stripped of their due process rights, and forced to either pay, perform community service, or face an open-ended threat of seizure of their person and property. (ECF 4 Exhibit D).

II.

PROCEDURAL HISTORY

1. **On Monday, February 1, 2021**, Plaintiff filed his petition in El Paso County, Texas seeking redress for the deprivation of Constitutionally protected rights under 42 U.S.C. § 1983.
2. **On February 22, 2021**, all named Defendants were properly served with the lawsuit.
3. **On March 15, 2021**, lead Defendant Ysleta Del Sur Pueblo, on behalf of itself and co-Defendants Tigua Tribal Police Department, Officer Erica Avila, and Officer Raul Candelaria (“Defendants”), improperly removed this case alleging the existence of federal question jurisdiction. The sole basis for its improper removal is that violations of 42 U.S.C. § 1983 “raise questions arising under the Constitution, laws or treaties of the United States” and this Court has jurisdiction pursuant to 28 U.S.C. § 1331. (ECF 1 pp. 2 ¶ 2).
4. Notably, the Defendants’ motion offers nothing aside from the blanket conclusion that this Court should disregard applicable law and exercise “full jurisdiction of over this action.”
5. Noticeably omitted from its notice of Removal, is any mention of the plain language of the Ysleta Del Sur Pueblo Restoration Act, 101 Stat 666 § 105(f), which unambiguously confers (with the tribal consent) both civil and criminal jurisdiction of this lawsuit to the State of Texas. 25 U.S.C. §§ 1321, 1322.

6. Further, the Defendants avoid mentioning nearly a century's worth of well-established precedent conferring jurisdiction over Plaintiff's claims in the Texas court where the action was properly filed. *Martinez v. California*, 444 U.S. 277, 283 (1980).

7. Interestingly, **one week after claiming this Court has jurisdiction over the action**, the Defendants filed a motion to dismiss alleging that this Court does not have jurisdiction over this action. Inexplicably and in direct conflict with the basis for its improper Removal, the Defendants argue that 25 U.S.C. § 1321 applies and concede that Texas retains criminal jurisdiction over the Defendants. (ECF 4 pp.8 ¶16). No explanation is provided for why the civil analog, 25 U.S.C. § 1322, does not apply.

8. Plaintiff's motion to remand is timely as it has been filed within the 30-day period allowed by 28 U.S.C. § 1447.

9. Since federal question jurisdiction does not exist, Plaintiff respectfully requests that this Court remand this case back to the County Court of El Paso County, Texas and award attorney's fees and expenses for the improper removal.

III. **AUTHORITIES AND ARGUMENT**

STANDARD OF REVIEW.

10. Federal courts are courts of limited jurisdiction and can only hear cases permitted under Article III of the Constitution and through a "jurisdictional grant authorized by Congress." *In re: Fraser*, 75 F. Supp. 2d 572, 576 (E.D. Tex. 1999). Federal courts are "duty-bound to examine their own subject-matter jurisdiction and may not proceed where it is apparent that jurisdiction does not exist." *Texas Medicine Resources, LLP v. Molina Healthcare of Texas, Inc.*, 356 F. Supp. 3d 612,

615 (N.D. Tex. 2019) (citing *Union Planters Bank Nat'l Ass'n v. Salih*, 369 F.3d 457, 460 (5th Cir. 2004)). If the court's subject matter jurisdiction is challenged, "the burden of proof falls on the party claiming jurisdiction, and the showing must be made by a preponderance of the evidence." *Vantage Trailers v. Beall Corp.*, 567 F.3d 745, 748 (5th Cir. 2009).

11. Additionally, "any ambiguities are construed against removal because the removal statute should be strictly construed in favor of remand." *Manguno v. Prudential Property & Cas. Ins. Co.*, 276 F.3d 720, 723 (5th Cir. 2002). Any "doubts regarding whether removal jurisdiction is proper should be resolved against federal jurisdiction." *Texas Medicine Resources, LLP*, 356 F. Supp. 3d at 616. If subject matter jurisdiction does not exist, "a federal court must remand the suit to the state court where it originated." *Nelson v. St. Paul Fire & Marine Ins. Co.*, 897 F. Supp. 328, 330 (S.D. Tex. 1995).

THE STATE COURT HAS JURISDICTION OVER PLAINTIFF'S SECTION 1983 CLAIMS.

12. It is well established that unless federal law provides differently, "indians going beyond reservation boundaries" are subject to any generally applicable state law. *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 795, (2014); See *Wagnon v. Prairie Band Potawatomi Nation*, 546 U.S. 95, 113 (2005) (quoting *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 148 (1973)). State as well as federal courts have jurisdiction over suits brought pursuant to 42 U.S.C. § 1983, which creates a remedy for violations of federal rights committed by persons acting under color of state law. *Howlett By & Through Howlett v. Rose*, 496 U.S. 356, 356 (1990).

13. The unambiguous language of both the Ysleta Del Sur Pueblo Restoration Act¹ and binding Supreme Court precedent² establish that the State of Texas retains jurisdiction over Plaintiff's claims.

14. The plain language of the Ysleta Del Sur Pueblo Restoration Act confers (with tribal consent) both civil and criminal jurisdiction of this lawsuit, pursuant to 25 U.S.C. § 1321 and 25 U.S.C. § 1322, to the State of Texas. See 101 Stat 666 § 105(f). Furthermore, binding Supreme Court precedent establishes that the State of Texas retains jurisdiction over Plaintiff's claims. *Martinez v. California*, 444 U.S. 277, 283 (1980). See *Howlett By & Through Howlett v. Rose*, 496 U.S. 356, 356 (1990); *First Nat. Bank of Chicago v. United Air Lines, Inc.*, 342 U.S. 396, (1952); *Hughes v. Fetter*, 341 U.S. 609, 611 (1951); *Broderick v. Rosner*, 294 U.S. 629, 642–643 (1935); *Kenney v. Supreme Lodge, Loyal Order of Moose*, 252 U.S. 411 (1920). Whether the Defendants' tortious conduct is criminal or civil, the result is the same. Jurisdiction, for this lawsuit, has been conferred to the State of Texas.

15. Furthermore, in the absence of any proper basis for removal, aside from the Defendants blanket conclusions, this Court does not have jurisdiction over this action and the case must be remanded. Plaintiff has only alleged state causes of action, in state court, against Defendants who have consented to the authority of the state court to decide the outcome of this lawsuit. There is no provision in the Restoration Act or any law which would permit the Defendants to revoke their

¹ 101 Stat 666 § 105(f); See 25 U.S.C. §§ 1321, 1322. The Defendants have consented to state authority over this cause of action and Congress has expressly conferred jurisdiction to the State of Texas.

² *Martinez v. California*, 444 U.S. 277, 283 (1980). See *Howlett By & Through Howlett v. Rose*, 496 U.S. 356, 356 (1990); *First Nat. Bank of Chicago v. United Air Lines, Inc.*, 342 U.S. 396, (1952); *Hughes v. Fetter*, 341 U.S. 609, 611 (1951); *Broderick v. Rosner*, 294 U.S. 629, 642–643 (1935); *Kenney v. Supreme Lodge, Loyal Order of Moose*, 252 U.S. 411 (1920).

consent to be sued in Texas courts. Whether the Defendants' tortious conduct is criminal or civil, the result is the same. Jurisdiction, for this lawsuit, belongs to the State of Texas.

IV.
CONCLUSION

16. Plaintiff's pleading is clear, no federal question exists, and the Defendants' have already consented to the state of Texas's jurisdiction over this lawsuit. Any ambiguity in Plaintiff's pleading is "construed against removal and in favor of remand to state court," and this case must be remanded. See *Mumfrey v. CVS Pharmacy, Inc.*, 719 F.3d 392, 397 (5th Cir. 2013) ("Any ambiguities are construed against removal and in favor of remand to state court.").

V.
REQUEST FOR COSTS AND FEES

17. Preparation of this Motion to Remand has required two full days and a half of an attorney's time. Plaintiffs are uncertain of the additional time that will be expended prior to any ruling on the motion to remand. Plaintiffs request that the court award a reasonable attorney's fee based upon Plaintiffs' counsel's hourly rate of \$300 per hour, to include the 18 hours expended as of the filing of the motion plus additional time required through a ruling on this Motion to Remand.

VI.
PRAYER

18. For these reasons, Plaintiffs request that the Court find that removal was improper, and this proceeding should be remanded to the state court from whence it was removed and Plaintiff be awarded expenses and attorney's fees.

19. Defendants have improperly removed this action from El Paso County, Texas. Plaintiff respectfully requests that this Court should immediately remand this case back to the County Court Number Six in El Paso County, Texas.

Respectfully submitted,

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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 5th day of April 2021.

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ORDER

On this date, came on to be considered Plaintiff's MOTION TO REMAND in the above-entitled and numbered cause. The Court, having considered Plaintiff's motion, is of the opinion that said motion be and is hereby **GRANTED**.

IT IS THEREFORE, ORDERED that this case is remanded back to the County Court Number Six in El Paso County, Texas and that Plaintiff recover attorney fees and costs from the Defendants for improperly removing this case.

SIGNED and ENTERED this _____ day of __, 2021.

**HONORABLE DAVID BRIONES
UNITED STATES DISTRICT JUDGE**