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' RESPONSE TO PLAINTIFF'S MOTION TO REMAND

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 Response to Plaintiff's Motion to Remand filed by Plaintiff Eduardo Holguin ("Holguin") and would respectfully show the Court as follows:

I.
FACTUAL BACKGROUND

1. On February 1, 2021, Holguin filed his Original Petition in County Court at Law Number Six in El Paso County, Texas. (Dkt. No. 1). In his Original Petition, Holguin asserts a claim for gross negligence and several section 1983 claims 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 to impound Holguin's vehicle if he refused to pay a monetary fee. (Pl.'s Orig. Compl. pp. 6-8). On March 15, 2021, Defendants removed the case to this Court under 28 U.S.C. § 1331 for federal-question jurisdiction because Holguin asserted section 1983 claims arising out of alleged constitutional violations. (Dkt. No. 1). After removal, on

March 22, 2021, Defendants filed a motion to dismiss, claiming, among other things, that they have sovereign immunity in light of their status as an Indian tribe and tribal officials. (Dkt. No. 5). Instead of responding to the motion to dismiss,[1] Holguin file a motion to remand this case to state court.[2] Because this Court has federal-question jurisdiction over Holguin's section 1983 claims, the Court should deny his motion to remand.

II.
LEGAL STANDARD

2. Federal courts have limited jurisdiction and must have statutory or constitutional power to adjudicate a claim. *See Merrell Dow Pharm., Inc. v. Thompson*, 478 U.S. 804, 807-08 (1986). "A district court has removal jurisdiction in any case where it has original jurisdiction." *E.g., Gutierrez v. Flores*, 543 F.3d 248, 251 (5th Cir. 2008) (citing 28 U.S.C. § 1441(a)). A federal district court has original jurisdiction whenever there is a question of federal law. *See* 28 U.S.C. § 1331; *see also Halmekangas v. State Farm Fire & Cas. Co.*, 603 F.3d 290, 293 (5th Cir. 2010).

3. Federal question original jurisdiction is codified at 28 U.S.C. § 1331, which vests federal district courts with the authority to hear "all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. A case arises under federal law if the "plaintiff's well-pleaded complaint raises issues of federal law. . . ." *City of Chicago v. Int'l Coll. of Surgeons*,

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[1] On April 7, 2021, the Court issued an order to show cause to Holguin inquiring the reason for his failure to file a response to Defendants' motion to dismiss, which was due on April 5, 2021. (Dkt. No. 6). To date, Holguin has neither responded to the Court nor filed a response to Defendants' motion to dismiss.

[2] In his Motion to Remand, Holguin contradicts the factual allegations in his Original Petition and disparages the police force and tribal judge of the Ysleta del Sur Pueblo. Despite alleging in his Original Petition that some Defendants were tribal police officers, he now claims that they are "casino security" acting as an "unlicensed police force" who issue "criminal infractions." (Pl.'s Mot. to Remand p. 1). Aside from equating tribal police officers to casino security guards, he disparaged the tribal court of the Ysleta del Sur Pueblo, calling it an "improperly constituted" "kangaroo court" and denigrated presiding Tribal Judge Enrique Granillo as "unqualified." (*Id.* at pp. 1-2). Despite not being part of Plaintiff's Original Petition, none of these atrocious allegations has any basis in law or fact and merely constitute an unwarranted attack on the judiciary of the Ysleta del Sur Pueblo.

522 U.S. 156, 163 (1997) (quotation omitted); *accord Howery v. Allstate Ins. Co.*, 243 F.3d 912, 916 (5th Cir. 2001). Because jurisdiction is fixed at the time of removal, the jurisdictional facts supporting removal are examined as of the time of removal. *Gebbia v. Wal-Mart Stores, Inc.*, 233 F.3d 880, 883 (5th Cir. 2000). In removal actions, the removing party bears the burden of establishing that federal jurisdiction exists. *See De Aguilar v. Boeing Co.*, 47 F.3d 1404, 1408 (5th Cir. 1995).

III.
ARGUMENT

4. Holguin's motion to remand is frivolous and without merit. It is full of contradictions and misrepresentations to the Court. In his motion to remand, Holguin claims that he only raised state law causes of action in his Original Petition. (Pl.'s Mot. to Remand ¶ 15) (stating that "Plaintiff has only alleged state causes of action in state court against Defendants"). He alleges that his Original Petition did not address any federal questions. (*Id.* ¶ 16) (alleging that "Plaintiff's pleading is clear, no federal question exists"). Yet, a cursory review of his Original Petition reveals that he raised seven federal causes of action under section 1983. (Pl.'s Orig. Pet. pp. 6-8). However, despite claiming that he only raised state causes of action, Holguin—in the same motion to remand—acknowledges that he filed a section 1983 suit. (Pl.'s Mot. to Remand ¶ 1) (claiming that "Plaintiff filed his petition . . . seeking redress for the deprivation of Constitutionally [sic] protected rights under 42 U.S.C. § 1983"). Holguin cannot have it both ways. He cannot frivolously claim that he only pled state-law causes of action and, in the same breath, claim that he pled a federal section 1983 claim. In light of these crass misrepresentations, the Court should deny Holguin's motion to remand.

A. PLAINTIFF ADMITS THAT FEDERAL COURTS HAVE JURISDICTION OVER SECTION 1983 SUITS

5. The focus of Holguin's motion to remand is confusingly misplaced. In support of remand, Holguin argues that Texas courts can presumably exercise jurisdiction over this case. That is not the proper inquiry. Instead, on this motion to remand, the sole issue is whether ***this*** Court can

exercise federal-question jurisdiction over the case under 28 U.S.C. § 1331—not whether Texas courts may exercise concurrent jurisdiction. In his Original Petition, Holguin asserted various federal causes of action premised under section 1983 for alleged violations of the Fourteenth Amendment of the U.S. Constitution. (Pl.'s Orig. Pet. pp. 6-8). Indeed, Holguin admits in his motion to remand that "***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." (Pl.'s Mot. to Remand ¶ 12) (emphasis added).

> 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).

(*See* Pl.'s Mot. to Remand ¶ 12) (emphasis added).

6. This admission should end the Court's inquiry. However, despite this admission, Holguin appears to suggest that, because state and federal courts have concurrent jurisdiction over section 1983 suits, the Court should remand this case. (Pl.'s Mot. to Remand ¶ 12). Notwithstanding the concurrent jurisdiction between state and federal courts over section 1983 claims, this is not a proper basis to remand the case to state court.

7. Indeed, contrary to Holguin's allegations, federal courts have overwhelmingly held that section 1983 claims are not remandable simply because state and federal courts have concurrent jurisdiction over these federal claims.[3] In *Hinton v. Peden*, No. 3:05CV535-WHB-AGN, 2005 WL

[3] *See generally Williams v. Ragnone*, 147 F.3d 700, 702 (8th Cir. 1998) (district court's reliance on concurrent jurisdiction of state and federal courts over section 1983 claims in remanding to state court "was misplaced"); *Dorsey v. Detroit*, 858 F.2d 338, 341 (6th Cir. 1988) ("Section 1983 actions are not included among the nonremovable actions listed in 28 U.S.C. § 1445, and no other statute provides, expressly or otherwise, that § 1983 actions are nonremovable."); *Pace v. Hunt*, 847 F. Supp. 508, 509–10 (S.D. Miss. 1994) ("[T]he removal statute would be eviscerated if actions such [as those arising under § 1983] were remanded simply because such courts have concurrent

8171755, at *1 (S.D. Miss. Nov. 14, 2005), a Mississippi federal district court addressed a similar issue. There, a plaintiff filed suit raising three state law causes of action and one federal cause of action under section 1983. *Id.* The defendants subsequently removed the case to federal court based on federal-question and diversity jurisdiction. *Id.* In response, the plaintiff filed a motion to remand, claiming that the federal court lacked jurisdiction. *Id.* The defendants contended that, "because [the] [p]laintiff [had] asserted a § 1983 claim, which is clearly a claim under federal law, the exercise of jurisdiction under § 1331 [was] proper." *Id.* The plaintiff, however, contended that "remand should be ordered because the State Courts of Mississippi and the Federal Courts have concurrent jurisdiction over a violation of 42 U.S.C. § 1983." *Id.* (internal quotation marks omitted). The court properly denied the motion to remand, finding that the "[p]laintiff [had] misunderstood the relationship between the principle of federal question jurisdiction under § 1331, and the principle of concurrent federal and state jurisdiction." *Id.* More importantly, the court concluded that "[t]he fact that state and federal courts have concurrent jurisdiction over a federal law claim does not bar removal of the

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jurisdiction."); *Gleichauf v. Ginsberg*, 859 F. Supp. 229, 232 (S.D.W. Va. 1994) ("[T]his case will not be remanded on the basis of the concurrent jurisdiction of the state courts over § 1983 actions"); *Hummel v. Kamehameha Schools/Bernice Pauahi Bishop Estate*, 749 F. Supp. 1023, 1025 (D. Hawaii 1990) ("[C]laims under . . . the civil rights statutes which are within this court's original jurisdiction . . . are generally removable"); *Aben v. Dallwig*, 665 F. Supp. 523, 524 (E.D. Mich. 1987) ("Nothing in the civil rights statute expressly prohibits removal."); *Spencer v. South Fla. Water Management Dist.*, 657 F. Supp. 66, 67 (S.D. Fla. 1986) ("[T]o allow the [Plaintiff] to remand the [civil rights] case and effectively overturn the Defendant's otherwise lawful removal to federal court would essentially render meaningless the federal removal statute, which contemplates the use of removal procedures when the district court can properly exercise original jurisdiction over the matter in dispute."); *Cal. Republican Party v. Mercier*, 652 F. Supp. 928, 932 (C.D. Cal. 1986); *Cook v. Robinson*, 612 F. Supp. 187, 189 n. 2 (E.D. Va. 1985); *Routh v. City of Parkville, Mo.*, 580 F. Supp. 876, 877 (W.D. Mo. 1984) ("[I]t stretches current statutory language past the breaking point to hold that the granting of concurrent jurisdiction expressly prohibits removal."); *see also Baldwin v. Sears, Roebuck & Co.*, 667 F.2d 458, 459 (5th Cir. 1982) (holding that "[u]nless . . . there is an express declaration by Congress to the contrary, all types of civil actions, in which there is concurrent jurisdiction in both federal and state courts, are removable"); *Worley v. Webb Consol. Indep. Sch. Dist.*, No. CIV.A. L-08-136, 2009 WL 87781, at *1 (S.D. Tex. Jan. 9, 2009) ("The fact that [Section 1983] claim could be tried in state court does not mean that a defendant cannot opt to remove to federal court."); *Bowie v. Hodge*, No. CV 20-1218, 2020 WL 3026617, at *4 (E.D. La. June 5, 2020) ("Plaintiff incorrectly concludes this concurrent jurisdiction prevents removal of § 1983 cases to federal court.").

claim to federal court under § 1331." *Id.* Were the Court to remand the case to state court simply because it has concurrent jurisdiction over section 1983 claims, it would completely eviscerate the removal statute. *See, e.g.*, *Pace v. Hunt*, 847 F. Supp. 508, 509–10 (S.D. Miss. 1994) ("[T]he removal statute would be eviscerated if actions such [as those arising under § 1983] were remanded simply because such courts have concurrent jurisdiction."). The same is true in this case.

8. However, despite pleading claims under section 1983 in his Original Petition, Holguin surprisingly claims in his motion to remand that he only asserted state causes of action:

> 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

* * *

> 16. Plaintiff's pleading is clear, no federal question exists, and the Defendants' have already

(*See* Pl.'s Mot. to Remand ¶¶ 15-16) (emphasis added).

9. These egregious misrepresentations are squarely contradicted by Holguin's Original Petition. As noted below, with the exception of a single claim for gross negligence, a cursory review of Plaintiff's Original Petition reveals that Holguin alleged several federal causes of action under section 1983 for constitutional violations:

> 42 U.S.C. § 1983 – UNLAWFUL TERRY STOP AS AGAINST DEFENDANTS AVILA, CANDELARIA, AND OFFICER DOE

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> 42 U.S.C. § 1983 – UNLAWFUL SEIZURE AS AGAINST DEFENDANTS AVILA, CANDELARIA, AND OFFICER DOE

* * *

> 42 U.S.C. 1983 – VIOLATION OF PROCEDURAL DUE PROCESS AS AGAINST DEFENDANTS TATUM, HUFFAKER AND HOBB

* * *

> 42 U.S.C. 1983 – VIOLATION OF SUBSTANTIVE DUE PROCESS AS AGAINST DEFENDANTS

* * *

> 42 U.S.C. 1983 – CUSTOM AND PRACTICE AS AGAINST THE YSLETA DEL SUR PUEBLO AND THE TIGUA TRIBAL POLICE DEPARTMENT

(Pl.'s Orig. Pet. at pp. 6-8).

10. Holguin's contention that his pleadings are "clear" that "no federal question exists" is meritless and frivolous. In fact, in his own motion to remand, Holguin admitted that he filed a section 1983 suit against Defendants "seeking redress for the deprivation of Constitutionally [sic] protected rights under 42 U.S.C. § 1983."

> 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.

(Pl.'s Mot. to Remand ¶ 1).

11. Holguin should not be allowed to play fast and loose with the Court. He claims that he only pled state causes of action and did not raise any federal questions; yet, his Original Petition clearly shows otherwise. As the "master of [his] complaint," a plaintiff is entitled to "elect to proceed in state court on the exclusive basis of state law, thus defeating the defendant's opportunity to remove, but taking the risk that his federal claims will one day be precluded." *Carpenter v. Wichita Falls Indep. Sch. Dist.*, 44 F.3d 362, 366 (5th Cir. 1995). Here, Holguin deliberately brought federal causes of action under section 1983 in state court. In doing so, Holguin undertook the risk that Defendants would remove his case to this Court for raising a federal question in his Original Petition. Because

Holguin pled several section 1983 claims arising from alleged constitutional violations, this Court has federal-question jurisdiction under section 1331.

B. PUBLIC LAW 280 HAS NO BEARING ON THIS CASE

12. Furthermore, Holguin mistakenly claims that the Court should remand this case because Texas state courts have subject-matter jurisdiction pursuant to 101 Stat. 666 and 25 U.S.C. §§ 1321, 1322—also known as Public Law 280. According to Holguin, "Defendants have consented to state authority over this cause of action and Congress has expressly conferred jurisdiction to the State of Texas." (Pl.'s Mot. to Remand ¶ 15, n.1). Holguin claims that these statutes confer "both civil and criminal jurisdiction of this lawsuit . . . to the State of Texas." (*Id.* ¶ 14). Yet, as previously mentioned, whether a Texas state court can also exercise jurisdiction over this case has no bearing.[4] However, even if it did, Holguin misinterprets these statutes.

1. Because 25 U.S.C § 1321 Applies, at Best, to Criminal Offenses, It Has No Application to this Case

13. Title 25 U.S.C. § 1321 is inapplicable to this case because, at best, it applies to criminal offenses. That statute provides:

> The consent of the United States is hereby given to any State not having jurisdiction over ***criminal offenses*** committed by or against Indians in the areas of Indian country situated within such State to assume, with the consent of the Indian tribe occupying the particular Indian country or part thereof which could be affected by such assumption, such measure of jurisdiction over any or all of such offenses committed within such Indian country or any part thereof as may be determined by such State to the same extent that such State has jurisdiction over any such offense committed

[4] The Court does not need to determine whether Public Law 280, codified in 25 U.S.C. §§ 1321, 1322, confers jurisdiction to state courts. Again, following removal, the only pertinent question is whether ***this*** Court—not a state court—has original jurisdiction based on the plaintiff's pleadings. *See* 28 U.S.C. § 1441(a) (permitting removal of "any civil action brought in a State Court of which the district courts of the United States have original jurisdiction"); *see also Aaron v. Nat'l Union Fire Ins. Co. of Pittsburgh, Penn.*, 876 F.2d 1157, 1160 (5th Cir. 1989) (holding that "[a] defendant may remove a state court action to federal court only if the action could have originally been filed in the federal court"). This Court has original jurisdiction over this case because Holguin pled several federal causes of action under section 1983 for alleged violations of the U.S. Constitution. (Pl.'s Orig. Pet. pp. 6-8). Because this Court has federal-question jurisdiction, it is irrelevant whether a Texas state court may supposedly have jurisdiction over this case under Public Law 280. *See supra* n.3.

> elsewhere within the State, and the ***criminal laws*** of such State shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that State.

25 U.S.C. § 1321 (emphasis added).

14. Holguin's Original Petition is devoid of any allegations or causes of action based on violations of criminal laws. He instituted a civil action for monetary damages. Because 25 U.S.C. § 1321 pertains, at best, to criminal offenses, it has no bearing on this case.

2. Holguin Neither Pled Nor Referenced 25 U.S.C § 1322 in his Original Petition

15. Holguin's reliance on 25 U.S.C. § 1322 is equally tenuous. In his Original Petition, Holguin did not reference 25 U.S.C. § 1322. This Court, therefore, cannot rely upon it. "The right of removal . . . depends upon the case ***disclosed by the pleadings*** as they stand when the petition for removal is filed." *See, e.g.*, *Barney v. Latham*, 103 U.S. 205, 215–16 (1880) (emphasis added); *see also Brown v. Sw. Bell Tel. Co.*, 901 F.2d 1250, 1254 (5th Cir. 1990) (holding that when a defendant seeks to remove a case, the question of whether jurisdiction exists is resolved by looking at the complaint at the time the petition for removal is filed); *Taylor v. Anderson*, 234 U.S. 74, 75–76 (1914) (holding that, under the well-pleaded complaint rule, [w]hether a case is one arising under [federal law] . . . must be determined from what necessarily appears in the plaintiff's statement of his own claim"). Thus, because Holguin neither pled nor referenced 25 U.S.C. § 1321 in his Original Petition, this cannot form a basis for remand.

3. Title 25 U.S.C § 1322 Does Not Waive the Sovereign Immunity of an Indian Tribe or its Tribal Officials

16. Finally, even assuming that 25 U.S.C. § 1322 was pled in the Original Petition, it is still inapplicable. Also known as Public Law 280, this statute addresses state civil jurisdiction over Indian country. 28 U.S.C. § 1360. Courts have narrowly construed its civil provisions to authorize only the extension of state adjudicatory jurisdiction over disputes involving Indians and arising in Indian country. *See Bryan v. Itasca County*, 426 U.S. 373, 387-88 (1976). Public Law 280 does not authorize

any additional civil regulatory jurisdiction by the State, nor does it waive an Indian tribe's sovereign immunity from suit. *See California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987).

17. The Supreme Court has expressly rejected the contention that Public Law 280 abrogated or waived tribal sovereign immunity from suit. For decades, the Supreme Court has held that "there is notably absent [in Public Law 280] any conferral of state jurisdiction over the *tribes* themselves." *Bryan*, 426 U.S. at 387–88 (emphasis added). The Court has recognized that the grant of jurisdiction in Public Law 280 did not contain any abrogation of tribal sovereign immunity. *Puyallup Tribe, Inc. v. Dep't of Game*, 433 U.S. 165, 171–72 (1977). It has repeatedly rejected any suggestion that Public Law 280 could provide an escape from tribal sovereign immunity, holding that it has "never read [Public Law] 280" to "constitute a waiver of tribal sovereign immunity." *See Three Affiliated Tribes of the Fort Berthold Reservation v. Wold Eng'g*, 476 U.S. 877, 892 (1986).

18. Thus, as recognized by the Supreme Court, Public Law 280, as codified in 25 U.S.C. § 1322, does not apply to Indian *tribes*. Indian tribes, like the Ysleta del Sur Pueblo, enjoy sovereign immunity from suit. *See, e.g., Kiowa Tribe of Okla. v. Mfg. Techs., Inc.*, 523 U.S. 751, 754 (1998). This sovereign immunity extends to tribal agencies and officials, such as Defendants, who act under color of tribal law. *See 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 Cook v. AVI Casino Enterprises, Inc.*, 548 F.3d 718, 727 (9th Cir. 2008). Here, in his Original Petition, Holguin admits that Defendants are a federally recognized Indian tribe and tribal agencies and officials acting under color of tribal law. (Pl.'s Orig. Pet. pp. 1-2). Therefore, assuming that such an inquiry was relevant on a motion to remand, which it is not, Public Law 280 does not confer jurisdiction to Texas state courts. Because Holguin filed this motion to remand in the face of decades of contrary case law and blatant mischaracterizations, Defendants respectfully request the

Court to deny the motion.[5]

IV.
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 deny Plaintiff's Motion to Remand; 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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[5] In similar cases, courts have sanctioned plaintiffs for filing frivolous motions to remand. *See Bolden v. McMillin*, No. CIVA307CV00154HTWLRA, 2007 WL 4287464, at *3 (S.D. Miss. Dec. 3, 2007) (awarding attorney's fees to defendant under Rule 11 where plaintiff sought to remand section 1983 suit because the motion was "filed in clear defiance of plainly-established jurisprudence which counsels against such a motion").

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 12th day of April, 2021:

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