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UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

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TARA JEANNE AMBOH, as Uinta Band  
Utah Indian,

Plaintiff,

v.

DUCHESNE COUNTY, a political  
subdivision of the State of Utah and  
Duchesne County, STEPHEN FOOTE,  
Duchesne County Attorney, and EIGHTH  
DISTRICT COURT, DUCHESNE  
COUNTY

Defendants.

**MOTION TO DISMISS  
COMPLAINT**

Case No. 2:21-cv-00564

Magistrate Judge Cecilia M. Romero

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## MOTION AND RELIEF REQUESTED

Defendant State of Utah’s Eighth Judicial District Court in and for Duchesne County (“Eighth District Court”), through counsel, and pursuant to [Federal Rules of Civil Procedure 12\(b\)\(1\), 12\(b\)\(6\)](#) and DUCiv 7-1(a), move to dismiss Plaintiff Tara Amboh’s Complaint (ECF 1) with prejudice. The bases of the motion are:

Plaintiff’s claims are barred:

- Because the Eighth District Court is not an appropriate defendant, as it is not capable of being sued and is immune from suit for damages for alleged violations of Amboh’s civil rights;
- Because the Indian Civil Rights Act Bars a private right of action;
- Because the Governmental Immunity Act Bars Plaintiff’s State-Law Claims;
- Because Judge Chiara is entitled to judicial immunity;
- Because Plaintiff is not entitled to declaratory or injunctive relief;
- Because the Federal Courts Improvement Act and the Anti-Injunction Act Prevents Injunctive Relief; and
- Because the *Younger* abstention doctrine precludes relief.

For these reasons, more fully described in the attached Memorandum of Law, the Eighth District Court requests that the case against it be dismissed with prejudice.

## **MEMORANDUM**

### **INTRODUCTION**

This case arises out of several misdemeanor charges filed in 2020 against Plaintiff Tara Jeanne Amboh. Amboh was arrested, charged and briefly incarcerated in the Duchesne County Jail. She was convicted of the charges in the State of Utah's Eighth Judicial District Court in and for Duchesne County ("Eighth District Court"). Amboh has appealed that conviction to the Utah Court of Appeals, but the Appellate Court decision is pending.

Amboh, who is proceeding *pro se*, has sued any conceivable party involved in the prosecution, even if these entities and individuals cannot be sued. The Eighth District Court is not named in the caption of the Complaint, yet the Court is included in the allegations contained in the Complaint.

### **FACTUAL BACKGROUND**

The following facts taken from Plaintiff's Complaint, or facts that may be judicially noticed, are treated as true for the purposes of this motion only:

1. On December 7, 2020, following a traffic stop Amboh was arrested and cited for several misdemeanors. [U.C.A. §§ 41-12A-302, 76-8-305.5 and 76-9-102.](#)

2. Amboh was formally charged with those offenses.<sup>1</sup> She was tried in the Eighth District Court in a case before the Honorable Samuel Chiara.<sup>2</sup>

3. During the proceedings, Amboh made arguments regarding jurisdiction but the Court rejected those arguments.<sup>3</sup>

4. Amboh has appealed her conviction to the Utah Court of Appeals,<sup>4</sup> and the Court of Appeals has docketed that appeal,<sup>5</sup> but a decision from the Court of Appeals is pending.

5. On September 27, 2022, Amboh commenced the instant case.<sup>6</sup> All claims against the Court appear to be related to the prosecution and the Judge's decision.<sup>7</sup>

### LEGAL STANDARD

The Eighth District Court moves to dismiss Plaintiff's Complaint pursuant to [Federal Rule of Civil Procedure 12\(b\)\(1\)](#) [Federal Rule of Civil Procedure 12\(b\)\(6\)](#). [Federal Rule of Civil Procedure 12\(b\)\(1\)](#) permits dismissal of cases for "lack of subject-matter jurisdiction." When a motion made pursuant to this rule is a "facial" attack on the claims as pleaded, as it is in this case, the motion is reviewed applying the same standards as one made pursuant to [Rule 12\(b\)\(6\)](#). [Muscogee \(Creek\) Nation v. Okla. Tax Comm'n](#), 611 F.3d 1222, 1227 n.1 (10th Cir. 2010).

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<sup>1</sup> See *Information*, ECF 1-2 at pages 4 through 5.

<sup>2</sup> See *Sentence, Judgment, Commitment, Exhibit A*.

<sup>3</sup> See *Minutes*, Exhibit B hereto at page 2.

<sup>4</sup> See *Notice of Appeal*, Exhibit C hereto.

<sup>5</sup> See *Notice*, Exhibit D hereto.

<sup>6</sup> We recognize that service is improper. Nonetheless, the court should dismiss the instant case because the Eighth District Court is immune from suit.

<sup>7</sup> See *Complaint*, ECF 1.



In reviewing a 12(b)(6) motion to dismiss, the court assumes the truth of well-pleaded facts and draws reasonable inference in a light most favorable to the plaintiff. *E.g., Leverington v. City of Colo. Springs*, 643 F.3d 719, 723 (10th Cir. 2011). But a claim survives only if “there is plausibility in the complaint.” *Hall v. Witteman*, 584 F.3d 859, 863 (10th Cir. 2009) (citations and quotations omitted). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). Threadbare recitals of elements, facts “merely consistent” with liability, “labels and conclusions,” or “unadorned, the-defendant-unlawfully-harmed me accusation[s]” are insufficient. *Iqbal*, 556 U.S. at 678; *Leverington*, 643 F.3d at 723 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)); *Gee v. Pacheco*, 627 F.3d 1178, 1184–85 (10th Cir. 2010) (citations and quotations omitted); *Hall*, 584 F.3d at 863 (citations and quotations omitted).

In reviewing a motion to dismiss, the Court may rely on the facts as alleged in the complaint, but may also rely on all documents adopted by reference in the complaint, documents attached to the complaint, or facts that may be judicially noticed. *See Fed. R. Civ. P. 10(c); Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322–23 (2007); *Hall v. Bellmon*, 935 F.2d 1106, 1112 (10th Cir. 1991). In the context of a motion to dismiss, this Court may take judicial notice of a state court docket and filings. *See St. Louis Baptist Temple, Inc. v. Fed. Deposit Ins. Corp.*, 605 F.2d 1169, 1172 (10th Cir. 1979) (“[I]t has been

held that federal courts, in appropriate circumstances, may take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue.”); *Stack v. McCotter*, No. 02-4157, 79 F. App’x 383, 391 (10th Cir. Oct. 24, 2003) (ord. & j. not selected for publication) (recognizing that the court can take judicial notice of a state district court docket sheet).

## LEGAL ARGUMENT

### 1. Amboh’s Claims Against the Court Must be Dismissed

Amboh has named the Eighth District Court in the caption, but has alleged no facts against it. And it should not be a defendant in this case. Her claims brought under § 1983, either for constitutional or federal statutory violations, are not actionable because the Court is not a “person” subject to suit under § 1983. Any direct claim under the Indian Civil Rights Act (“ICRA”) fails to state a claim, as it does not provide a provide right of action. And her state law claims are barred by the Governmental Immunity Act of Utah. All claims against the Court should be dismissed.

#### 1.1 The Court is Not a Person Under § 1983.

Plaintiff’s case should be dismissed against the Eighth District Court. Section 1983 claims against the State of Utah and its entities, including the Eighth District Court, are barred because the State is not a “person” under the meaning of § 1983. Plaintiff cannot recover against the Court under this theory. For this reason, all claims against the Eighth District Court Defendant should be dismissed with prejudice. Section 1983 is the statutory vehicle for suing state actors for alleged violations of the Constitution or of federal laws. *Jojola v. Chavez*, 55 F.3d 488, 492

(10th Cir. 1995). It provides the exclusive available remedy for violation of federal constitutional rights. *Id.* **Section 1983** provides a remedy at law against any “person who, under color of any statute, ordinance, regulation, custom, or usage, of any State ... subjects ... any citizen of the United States ... to the deprivation of any rights ... secured by the Constitution.” 42 U.S.C. § 1983. In order to be subject to suit under, an entity must be a “person” as that term has been defined by the courts. *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 66 (1989).

The U.S. Supreme Court has interpreted “persons” in § 1983 to exclude states.<sup>8</sup> *Will v. Michigan Dep’t of State Police*, 491 U.S. 58, 72-74 (1989). “[N]either a State nor its officials acting in their official capacities are ‘persons’ under § 1983.” *Id.* at 71. Governmental entities that are considered arms of the State for Eleventh Amendment purposes are also not “persons” under § 1983. *Id.* at 70. “Accordingly, the State of Utah is not an appropriate party in a lawsuit brought under 42 U.S.C. § 1983, and the claims against it are not viable.” *Roach v. Univ. of Utah*, 968 F. Supp. 1446, 1451 (D. Utah 1997).

The Eighth District Court is an arm of the state for purposes of the ‘person’ analysis under §1983. *Roach*, 968 F. Supp. at 1451 (the University is an arm of the state and is therefore not a “person” within the meaning of § 1983.”), *citing Will v. Michigan at 66*, and *Watson v. Univ. of Utah Med. Ctr.*, 75 F.3d 569, 574 (10th Cir.1996). Accordingly, it cannot be a “person” subject to suit under § 1983, and Amboh’s First and Third claims

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<sup>8</sup> This statutory interpretation of § 1983 avoids the question of Eleventh Amendment immunity.

for relief, arising out of either the federal constitution or an alleged violation of the Indian Civil Rights Act, must be dismissed.

### **1.2 The ICRA Does Not Provide A Private Right Of Action.**

To the Extent that Plaintiff's First Claim is based directly on a violation of the The Indian Civil Rights Act ("ICRA"), [25 U.S.C. § 1303](#), it should be dismissed because the IRCA does not provide a right of action for damages. *Santa Clara Pueblo v. Martinez*, [436 U.S. 49 \(1978\)](#).

### **1.3 The Governmental Immunity Act of Utah Bars Plaintiff's State-Law Claims .**

Amboh's Second Claim is for an alleged violation of Utah common law. These claims must be dismissed because, even assuming that she has properly filed a Notice of Claim,<sup>9</sup> the claim should be dismissed because the Governmental Immunity Act of Utah bars her claims.

The Governmental Immunity Act provides, "Except as otherwise provided in this chapter, each governmental entity and each employee of a governmental entity are immune from suit for any injury that results from the exercise of a governmental function." [Utah Code § 63G-7-201\(1\)](#). The only conduct at issue—the district court's operation and adjudicative role in Amboh's prosecution—is a governmental function. *See Utah Code § 63G-7-102(5)* (defining "government function" as "each activity, undertaking or operation of a governmental entity" or "performed by a department,

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<sup>9</sup> After further investigation, the Court reserves the right to argue that the case should be dismissed against it for failure to file a notice of claim.

agency, employee, agent, or officer of a governmental entity”); *Peck v. State*, 2008 UT 39, ¶ 8, 191 P.3d 4 (explaining, “there is no dispute that the UHP troopers were undertaking a governmental function” when they pulled over and arrested the plaintiff). And, Section 63G-7-101 makes clear that the “scope of the waivers and retentions of immunity found in this comprehensive chapter . . . governs all claims against governmental entities or against their employees or agents arising out of the performance of the employee’s duties, within the scope of employment, or under color of authority.” *Utah Code* § 63G-7-101(2)(b) (emphasis added). Accordingly, the Court is immune from suit. Because the Court is immune, and Amboh has not articulated any facts or legal theory that would waive immunity, the Court should be dismissed.

Even if the Court construed Amboh’s claim to be one that might be waived, (*see, e.g., Utah Code* § 63G-7-301(2)(i) (waiving immunity for claims of negligence) immunity is reserved because the claim arises “out of, in connection with, or results from” *Utah Code* § 63G-7-201(4), “assault, battery, false imprisonment, false arrest, abuse of process, or a violation of civil rights,” *Utah Code* § 63G-7-201(4)(b), or the “institution or prosecution of any judicial or administrative proceeding, even if malicious or made without probable cause;” *Utah Code* § 63G-7-201(4)(e), or the “incarceration” of Amboh, *Utah Code* § 63G-7-201(4)(j).

Under the allegations of Amboh’s complaint, the Eighth District Court retains its immunity. And even if the Court determined there was an immunity waiver, the State has

specifically retained immunity for any tort claims asserted by Amboh. Accordingly, the State's immunity is retained, and the claims should be dismissed.

**2. To the Extent It has Been Pleaded, Amboh's Claim against Judge Chiara is Barred by Judicial Immunity**

Plaintiff's Complaint should be dismissed against Judge Chiara of the Eighth District Court, who presided over the prosecution of the State's case against her. It is well-settled that judges are shielded with absolute immunity from suits for money damages based on their judicial action, including suits pursuant to 42 U.S.C. § 1983, and for suits based on state law. *Mireles v. Waco*, 502 U.S. 9, 9–10 (1991); *Forrester v. White*, 484 U.S. 219, 225–26 (1988); *Stein v. Disciplinary Bd. of Supreme Court of NM*, 520 F.3d 1183, 1189–90 (10th Cir. 2008) (citing *Snell v. Tunnell*, 920 F.2d 673, 686 (10th Cir. 1990)); *Bailey v. Utah State Bar*, 846 P.2d 1278 1280 (Utah 1993) (recognizing judicial immunity barring state law causes of action).

The doctrine of judicial immunity ensures “that a judicial officer, in exercising the authority vested in him, shall be free to act upon his own convictions, without apprehension of personal consequences to himself.” *Bradley v. Fisher*, 80 U.S. (13 Wall.) 335, 347 (1871). The rationale for this defense is to incorporate traditional common law immunities and to allow functionaries in the judicial system the latitude to perform their tasks absent the threat of retaliatory civil litigation. *Id.*

Judicial immunity protects Judge Chiara. Judicial immunity “is justified and defined by *the functions it protects and serves*, not by the person to whom it attaches.” *Parker v. Dodgion*, 971 P.2d 496, 498 (Utah 1998) (quoting *Forrester v. White*, 484 U.S. 219, 227 (1988)). Judicial immunity, accordingly, extends to functions that are “intimately related and essential to the judicial decision-making process.” *Id.* (quoting *Awai v. Kotin*, 872 P.2d 1332, 1334-45 (Colo. Ct. App. 1993)). Accordingly, Judges are entitled to absolute judicial immunity where the court is engaging in judicial conduct in a proceeding over which they have subject matter jurisdiction. *Id.*

To the extent that Plaintiff has made claims against Judge Chiara, they are presumptively for conduct undertaken in his capacity as a judicial officer. Even though she does not name either the Eighth District Court or Judge Chiara as Defendants, they are mentioned in her Complaint. Plaintiff fails to make any allegations against Judge Chiara in the complaint. Undoubtedly, when proceeding over the traffic stop case that Plaintiff was convicted of, Judge Chiara was engaged in and normally performed by a judicial officer acting in his judicial capacities. *See Mireles v. Waco*, 502 U.S. 9, 12 (1991). To the extent any claim actually exists relating to Judge Chiara, Plaintiff’s complaint against him is barred.

### **3. Amboh’s Is Not Entitled To Declaratory Or Injunctive Relief**

To the extent that Amboh’s Complaint may be read as requesting additional forms of injunctive or declaratory relief, those claims are barred.

### 3.1 The FCIA and Anti-Injunction Act Prevents Injunctive Relief.

These claims must be dismissed under the amendments to § 1983 created by the Federal Courts Improvement Act. (“FCIA”) Pub. L. No. 104-317, 110 Stat. 3847 (1996). In the FCIA, Congress amended 42 U.S.C. § 1983 to create an exception to the availability of an injunctive remedy against sitting judges: “[I]n any action brought against a judicial officer for an acts or omission taken in such officer’s judicial capacity, injunctive relief [under § 1983 for violations of federal law] shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.” Section 309(c) of the Federal Courts Improvement Act of 1996, Pub.L. No. 104–317, 110 Stat. 3847 (1996), codified at 42 U.S.C. § 1983. Amboh has not alleged that any acts taken by the Eighth District Court or Judge Chiara were in violation of a declaratory decree, or that declaratory relief was unavailable. “The mere fact that a litigant disagrees with a judge’s decision[s] does not provide a basis for § 1983 liability.” *Babbitt v. Kouris*, No. 2:15-cv-208-BCW, 2015 WL 5825098 (D. Utah Oct. 5, 2015) (mem. decision & ord. not selected for publication) (dismissing similar allegations against other Utah judges).

One focus of Amboh’s First (*cf.* Compl. at 8 stating entitlement to “injunctive relief . . . including the permanent injunction prohibiting Defendants from engaging in unlawful practice and procedure complained about int the Tenth Circuit Court”) and Third Causes of Action (*cf.* Compl. at 13 (stating she is “entitled to declaratory and injunctive relief”)) is directed at enjoining future prosecutions of her and other Ute tribal



members by the State of Utah, including enjoining current and future proceedings arising out of her convictions in the Eighth Judicial District Court at issue in this case. These claims are essentially a collateral attack upon her conviction, and to enjoin the Eighth District Court from further proceedings in that case. Consequently, these claims are barred by the Anti-Injunction Act. The Anti-Injunction Act provides that: “A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by an Act of Congress, or where necessary in aid of its jurisdiction or to protect or effectuate its judgments.”<sup>10</sup> None of these exceptions to the proscriptions against enjoining state court proceedings apply in this case.

### **3.2 Younger Abstention Precludes Relief.**

The *Younger* abstention doctrine also prohibits this Court from intervening in the Eighth District Court and Utah Court of Appeals proceedings. The *Younger* abstention doctrine provides that “[a]bsent unusual circumstances, a federal court is not permitted to intervene in ongoing state criminal proceedings” when adequate state relief is available,<sup>11</sup> and adequate relief is available to Amboh via the Utah State Courts. Moreover, abstention is mandatory if (1) there is an ongoing state criminal or civil proceeding; (2) “the state court provides an adequate forum to hear the claims raised in the federal complaint;” and (3) “the state proceedings involve important state interests, matters

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<sup>10</sup> 28 U.S.C. § 2283.

<sup>11</sup> *Walck v. Edmondson*, 472 F.3d 1227, 1232 (10th Cir. 2007)(citing *Younger v. Harris*, 401 U.S. 37, 54 (1971)).

which traditionally look to state law for their resolution or implicate separately articulated state policies.”<sup>12</sup> Furthermore the *Younger* doctrine does not apply when, as in this case, there is no on-going violation of federal law.<sup>13</sup>

Because Plaintiff’s proceedings are ongoing as evident by her appeal to the Utah Court of Appeals; because Utah courts provide an adequate forum to hear the claims raised by Amboh in her Complaint; and because these proceedings involve matters, such as traffic related offenses, which traditionally look to state law for resolution, this Court is prohibited from intervening in the Eighth District Court and Utah Court of Appeals proceedings.

### CONCLUSION

For the foregoing reasons, Defendant respectfully requests that this Court dismiss Plaintiff’s Complaint, with prejudice.

RESPECTFULLY SUBMITTED THIS 5th day of January, 2023.

OFFICE OF THE UTAH ATTORNEY GENERAL

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<sup>12</sup> *Id.* at 1233 (citations and quotations omitted). *See also Poulson v. Turner*, 359 F.2d 588, 591 (10th Cir. 1966)(Under federalism, the administration of criminal justice is generally committed to the states.)

<sup>13</sup> *See Johns v. Steward*, 57 F.3d 1544, 1552 (10th Cir. 1995).

**CERTIFICATION OF SERVICE**

I certify that on this 5th day of January, 2023, I electronically filed the foregoing, **MOTION TO DISMISS COMPLAINT**, using the Court's electronic filing system, and placed in the same in outgoing first-class mail, postage prepaid, to the following:

Tara J. Amboh

Uinta Band of Utah Indian

P.O. Box 155

Neola, UT 84053

/s/ Christiana L. Biggs