UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF OKLAHOMA

DEBORAUGH RODGERS, Plaintiff, *v.* **(1)** CITY OF TAHLEQUAH, an Oklahoma municipal corporation; **(2)** TAHLEQUAH POLICE DEPARTMENT; **(3)** BOARD OF COMMISSIONERS OF CHEROKEE COUNTY; **(4)** CHEROKEE COUNTY GOVERNMENTAL BUILDING AUTHORITY; **(5)** MATTHEW FRITS, in his individual and official capacity as an officer for Tahlequah Police Department; **(6)** DEXTER SCOTT, in his individual and official capacity as an officer for Tahlequah Police Department; **(7)** NATE KING, in his individual and official capacity as Chief of Police for Tahlequah Police Department; **(8)** JOSHUA KING, in his individual and official capacity as District Judge for Cherokee County District Court; **(9)** CHEROKEE COUNTY DETENTION CENTER OFFICERS DOES 1-50, in their individual and official capacities as employees of Cherokee County Governmental Building Authority; **(10)** CHEROKEE NATION OF OKLAHOMA; **(11)** CHEROKEE NATION DISTRICT COURT; **(12)** CHEROKEE NATION SUPREME COURT; **(13)** CHARLES HOSKIN, JR., in his individual and official capacity as Principal Chief of the Cherokee Nation of Oklahoma; **(14)** CHAD HARSHA, in his individual and official capacity as Attorney General for Cherokee Nation of Oklahoma; **(15)** TIMOTHY BARTEAUX, in his individual and official capacity as Judge of the Cherokee Nation District Court; **(16)** AMY PAGE, in her individual and official capacity as Judge of the Cherokee Nation District Court; and **(17)** SANDY CROSSLIN, in her individual and official capacity as Assistant Attorney General for Cherokee Nation of Oklahoma, Defendants.	Case No. 6:24-CV-303-JFH-JAR

REPORT AND RECOMMENDATION

Not every perceived wrong presents a judicially cognizable claim, and not every disagreement with the outcome of a criminal prosecution authorizes a federal court to reopen that prosecution through civil litigation. This case is not about whether plaintiff Deboraugh Rodgers ("Plaintiff") prevailed in tribal court, state court, or federal court; it is about whether federal law permits this Court to entertain the claims she now brings. It does not. Although Plaintiff challenges nearly every institution that touched her criminal prosecution—from municipal officers and entities to a state judge and the Cherokee Nation itself—federal law imposes limits that no court may disregard, including limits grounded in jurisdiction and immunity. Those limits control the disposition of this case.

Before the Court are the following five motions, along with Plaintiff's responses and the moving defendants' replies:

1) the motion to dismiss filed by defendant Joshua King, in his individual and official capacity as a District Judge for the District Court of Cherokee County, Oklahoma ("Judge King"), pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) [Dkt. 169], Plaintiff's response [Dkt. 183], and Judge King's reply [Dkt. 194];[1]

2) the motion to dismiss filed by City Defendants[2] pursuant to Fed. R. Civ. P. 12(b)(6) [Dkt. 170], Plaintiff's response [Dkt. 181], and City Defendants' reply [Dkt. 201];

3) the motion to dismiss filed by defendant Board of Commissioners of Cherokee County (the "Board") pursuant to Fed. R. Civ. P. 12(b)(2), 12(b)(5),

[1] For clarity and consistency herein, when the Court cites to the record, it uses the pagination and document numbers provided by CM/ECF.

[2] "City Defendants" include defendants City of Tahlequah (the "City"), Tahlequah Police Department ("TPD"), Police Chief Nate King in his individual and official capacity ("Chief King"), Officer Matthew Frits in his individual and official capacity ("Officer Frits"), and Officer Dexter Scott in his individual and official capacity ("Officer Scott"). *See* [Dkt. 170 at 1].

and 12(b)(6) [Dkt. 171], Plaintiff's response [Dkt. 182], and the Board's reply [Dkt. 198];

4) the motion to dismiss filed by Cherokee Defendants[3] pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) [Dkt. 205], Plaintiff's response [Dkt. 216], and Cherokee Defendants' reply [Dkt. 221]; and

5) the motion to quash service filed by Cherokee County Governmental Building Authority ("CCGBA") pursuant to Fed. R. Civ. P. 4, 12(b)(2), and 12(b)(5) [Dkt. 172], Plaintiff's response [Dkt. 180], and CCGBA's reply [Dkt. 197].

I. BACKGROUND

Plaintiff, initially appearing *pro se*, filed this civil rights action on August 22, 2024. Her original Complaint named approximately 60 defendants. [Dkt. 2]. Counsel entered an appearance for Plaintiff on May 27, 2025. [Dkt. 162]. Plaintiff then moved for additional time to allow counsel to respond to pending motions and/or to amend the Complaint. [Dkt. 163]. The Court granted leave to amend. [Dkt. 164].

On July 7, 2025, Plaintiff filed the Amended Complaint setting forth eight causes of action against 17 defendants:

- **Count I** asserts a claim for habeas relief under 28 U.S.C. § 1303 and 28 U.S.C. § 2241 based on alleged violations of the Indian Civil Rights Act ("ICRA"), the Fourth Amendment, and the Fourteenth Amendment by Cherokee Nation, CNDC, CNSC, Judge Barteaux, Judge Page, and Judge King [*Id*. at 22-24];
- **Count II** asserts a § 1983 claim under the Fourth and Eighth Amendments based on allegations of unlawful seizure, search, and

[3] "Cherokee Defendants" include defendants Cherokee Nation of Oklahoma ("Cherokee Nation"), Cherokee Nation Supreme Court ("CNSC"), Cherokee Nation District Court ("CNDC"), Cherokee Nation Principal Chief Charles Hoskin, Jr. in his individual and official capacity ("Chief Hoskin"), CNDC Judge Timothy Barteaux in his individual and official capacity ("Judge Barteaux"), CNDC Judge Amy Page in her individual and official capacity ("Judge Page"), Cherokee Nation Attorney General Chad Harsha in his individual and official capacity ("AG Harsha"), and Cherokee Nation Assistant Attorney General Sandy Crosslin in her individual and official capacity ("AAG Crosslin"). *See* [Dkt. 205 at 8; Dkt. 225]. In October 2025, Plaintiff substituted AG Harsha as a defendant in place of former Cherokee Nation Attorney General Sara Hill. [Dkt. 225].

detention against the City, TPD, Chief King, Officer Frits, and Officer Scott [*Id*. at 24-25];

- **Count III** asserts a § 1983 claim under the Fourth, Eighth, and Fourteenth Amendments based on alleged excessive force and unconstitutional conditions of confinement against the City, TPD, Chief King, Officer Frits, Officer Scott, the Board, CCGBA, and Cherokee County Detention Center ("CCDC") Officers Does 1-50 [*Id*. at 25];
- **Count IV** asserts a § 1983 claim for malicious prosecution and abuse of process against all defendants [*Id*. at 25-26];
- **Count V** asserts a § 1983 claim for alleged violations of due process and equal protection by all defendants [*Id*. at 26];
- **Count VI** asserts a § 1985(3) claim alleging a conspiracy among all defendants to interfere with Plaintiff's civil rights [*Id*. at 26-27];
- **Count VII** asserts a claim under 25 U.S.C. § 1302 based on alleged violations of the ICRA by all defendants [*Id*. at 27-28]; and
- **Count VIII** seeks a declaratory judgment that Cherokee Nation courts lack lawful authority to exercise criminal jurisdiction over Plaintiff based on the contention that CNDC was never lawfully reestablished under the Oklahoma Indian Welfare Act after tribal courts were abolished by the Curtis Act [*Id*. at 29-30].

These claims arise from Plaintiff's criminal prosecution in CNDC and related appeals to CNSC, as summarized below. *See* [*id*. at 7-8, ¶ 1].

A. CNDC No. CM-2021-772 and CNSC No. SC-2022-07

On April 7, 2021, Officers Frits and Scott arrested Plaintiff for driving under the influence of alcohol, resisting an officer, and transporting a loaded firearm in a motor vehicle. [*Id*. at 8, ¶ 4]. After Judge King determined that Plaintiff is an Indian and referred the matter to the Cherokee County District Attorney, the case was transferred to CNDC, where Cherokee Nation prosecutors filed an Information on May 7, 2021 charging Plaintiff with these offenses. [*Id*. at 15-16, ¶¶ 52-53; Dkt. 205-

1].[4] The Information alleged that Plaintiff is a "member of the Cherokee Nation," that the charged conduct occurred "within the Cherokee Nation," and that it was "contrary to the Cherokee Nation statutes …, and against the peace and dignity of the Cherokee Nation." [Dkt. 205-1 at 3]. Plaintiff pleaded not guilty at her initial appearance. [Dkt. 166 at 16, ¶ 57; Dkt. 205-2].

Plaintiff alleges that during the April 7 arrest, Officers Frits and Scott used unnecessary and excessive force, failed to advise her of her rights under *Miranda v. Arizona*, 384 U.S. 436 (1966), arrested her without probable cause, and unlawfully searched her vehicle. [*Id.* at 8-10, ¶¶ 6-17]. She further alleges that, after she was booked into CCDC, detention officers denied her medical treatment and threatened to use pepper spay if she continued to request care. [*Id.* at 15, ¶ 51].

On July 25, 2022, Plaintiff, proceeding *pro se*, moved in CNDC to dismiss for lack of jurisdiction, asserting that she is a both a Cherokee nation citizen and a member of the United Keetoowah Band of Cherokee Indians in Oklahoma ("UKB") and that UKB, not Cherokee Nation, possesses criminal jurisdiction over the "Cherokee Reservation." [*Id.* at 17, ¶ 61; Dkt. 205-3 at 2]. Judge Barteaux denied the motion, adopting the Cherokee Nation prosecutors' objection to dismissal. [Dkt. 166 at 17, ¶ 64; Dkt. 205-4; Dkt. 205-5].

Four days before trial, Plaintiff moved to stay CNDC proceedings while she sought review in CNSC. [*Id.* at 18, ¶ 65; Dkt. 205-6]. Judge Barteaux denied the

[4] The Court takes judicial notice of the docket sheets and related documents in Plaintiff's tribal criminal proceedings and related matters. *See United States v. Pursley*, 577 F.3d 1204, 1214 n.6 (10th Cir. 2009).

motion. [*Id.*; Dkt. 205-7]. On August 22, 2022, Plaintiff filed a petition in error in CNSC, appealing the jurisdictional ruling. [*Id.* at 18, ¶ 66; Dkt. 205-8]. That same day, CNDC convened a jury trial at which Plaintiff appeared *pro se*. [*Id.* at 18, ¶ 67; Dkt. 206-9; Dkt. 205-10 at 2].

According to the CNDC contempt order, after AAG Crosslin completed *voir dire*, Plaintiff was invited to conduct her own *voir dire* but instead attempted to reargue previously decided motions. [Dkt. 205-10 at 2]. When the jury was excused, Plaintiff attempted to leave the courtroom and refused repeated directions from Judge Barteaux to return to counsel table. [*Id.* at 2-3]. Judge Barteaux revoked Plaintiff's bond and cited her for direct contempt after she declined multiple options to participate or remain seated. [*Id.*; Dkt. 205-9].[5] At the August 30 arraignment on the contempt citation, Judge Barteaux found that Plaintiff willfully obstructed proceedings and disobeyed court orders on August 22, 2022, and imposed a contempt sanction of time served and $320 in jury costs. [Dkt. 205-10 at 3-4].

Plaintiff was incarcerated at CCDC from August 22 to September 2, 2022. [Dkt. 166 at 18, ¶¶ 68-69]. She alleges that a detention officer identified as "Blue" pepper-sprayed her without cause and, together with other officers, hit, kicked, and slapped her. [*Id.* at 19, ¶¶ 74-76]. She further alleges that "Blue" forced her to use moldy showers, that limited toilet access caused permanent bladder injury, and that she

[5] On August 25, 2022, Plaintiff filed a *pro se* petition for writ of habeas corpus in this Court against, among others, AG Harsha, Cherokee Nation, and CNSC, alleging that Cherokee Nation courts lack criminal jurisdiction over her. *Rodgers v. Winfrey et al.*, No. 6:22-CIV-237-JFH-DES, at Dkt. 1 (the "Habeas Case"). The Habeas Case remains pending as of the date of this Report and Recommendation.

suffered severe dehydration due to lack of drinking water. [*Id.* at 20-21, ¶¶ 81-82, 84]. Plaintiff also alleges that she appeared telephonically before Judge Page on or around August 23, 2022, and that Judge Page ordered her to remain incarcerated for an additional week to allow her an opportunity to consult with an attorney "due to [Plaintiff] not being able to represent herself in her condition." [*Id.* at 20, ¶¶ 79-80].

On October 3, 2022, Plaintiff filed another motion to stay CNDC proceedings while she pursued review of the jurisdictional issue in CNSC. [Dkt. 205-11]. Judge Barteaux denied the motion. [Dkt. 205-12]. After retaining counsel, Plaintiff signed and filed a declaration affirming her Cherokee Nation and UKB citizenships. [Dkt. 205-13]. On May 24, 2023, a jury found Plaintiff guilty on all three counts. [Dkt. 166 at 22, ¶ 85; Dkt. 205-14]. She was sentenced to time served and a $2,500 fine. [*Id.*; Dkt. 205-15].

B. CNSC No. SC-2023-10

On August 14, 2023, Plaintiff filed a petition in error in CNSC challenging her conviction. [Dkt. 205-16]. She did not pay the $100 filing fee and later asked CNSC to pay the approximate $2,500 trial transcript cost. [Dkt. 205-17]. CNSC remanded to CNDC to determine indigency. [Dkt. 205-18]. Plaintiff did not appear at the indigency hearing, and Judge Barteaux found that she had sufficient assets to pay the filing fee and transcript costs. [Dkt. 205-19].

On February 19, 2024, CNSC ordered Plaintiff to pay the filing fee within five days and to file a brief-in-chief within 30 days, warning that the appeal would be dismissed if she did not comply or seek an extension before the deadlines expired. [Dkt. 205-20]. Plaintiff sought a five-day extension on February 23, 2025. [Dkt. 205-

21]. She never paid the fee or filed a brief. On March 28, 2024, CNSC dismissed the appeal. [Dkt. 205-22].

II. THE MOTIONS TO DISMISS

Generally, the sufficiency of a complaint must rest on its contents alone. *Gee v. Pacheco*, 627 F.3d 1178, 1186 (10th Cir. 2010). Thus, "[w]hen a party presents matters outside of the pleadings for consideration, 'the court must either exclude the material or treat the motion as one for summary judgment.'" *Broker's Choice of Am., Inc., v. NBC Universal, Inc.*, 861 F.3d 1081, 1103 (10th Cir. 2017) (quotation omitted). Certain exceptions exist, however, and the Court may consider: (1) documents attached as exhibits to the Amended Complaint; (2) documents referenced in the Amended Complaint that are central to Plaintiff's claims if the parties do not dispute the documents' authenticity; and (3) matters of which the Court may take judicial notice. *See Gee*, 627 F.3d at 1186.

Motions to dismiss under Rule 12(b)(1) "generally take one of two forms. The moving party may (1) facially attack the complaint's allegations as to the existence of subject matter jurisdiction, or (2) go beyond allegations contained in the complaint by presenting evidence to challenge the factual basis upon which subject matter jurisdiction rests." *Merrill Lynch Bus. Fin. Servs., Inc. v. Nudell*, 363 F.3d 1072, 1074 (10th Cir. 2004) (quotations omitted). Here, Judge King and Cherokee Defendants rely on allegations in the Amended Complaint and matters of which the Court may take judicial notice,[6] so their Rule 12(b)(1) motions present a facial attack. *See*

[6] *See* [Dkt. 166 at 7, 15-18, 22, ¶¶ 1, 53-67, 85-86]; *see also* n.4, *supra*.

Schmitz v. Colo. State Patrol, 841 Fed. Appx. 45, 54 (10th Cir. 2020) (unpublished). In that posture, the Court "appl[ies] the same standards under Rule 12(b)(1) that are applicable to a Rule 12(b)(6) motion to dismiss for failure to state a cause of action." *Muscogee (Creek) Nation v. Okla. Tax Comm'n*, 611 F.3d 1222, 1227 n.1 (10th Cir. 2010).

To survive a motion to dismiss, a complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (*quoting* *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "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*. (*citing* *Twombly*, 550 U.S. at 556); *see also* *Gee v. Pacheco*, 627 F.3d 1178, 1184 (10th Cir. 2010). In reviewing the Amended Complaint, the Court must accept Plaintiff's allegations as true and construe them, and any reasonable inference to be drawn from them, in the light most favorable to Plaintiff. *See* *Kay v. Bemis*, 500 F.3d 1214, 1217 (10th Cir. 2007). Bare legal conclusions in a complaint are not assumed to be true; legal conclusion "must be supported by factual allegation" to state a claim upon which relief may be granted. *Iqbal*, 556 U.S. at 679.

In § 1983 cases, it is particularly important "that the complaint make clear exactly *who* is alleged to have done *what* to *whom*, to provide each individual with fair notice as to the basis of the claims against him or her." *Robbins v. Oklahoma*, 519 F.3d 1242, 1250 (10th Cir. 2008) (emphasis in original). A plaintiff must identify

specific actions taken by particular defendants in order to state a viable § 1983 claim. *Pahls v. Thomas*, 718 F.3d 1210, 1226 (10th Cir. 2013).

C. JUDGE KING'S MOTION TO DISMISS SHOULD BE GRANTED

Judge King, sued in his individual and official capacity, moves to dismiss the Amended Complaint on three grounds: (1) Plaintiff lacks standing; (2) Judge King is immune from suit under Eleventh Amendment principles and the doctrine of judicial immunity; and (3) Plaintiff fails to state a claim. Because the first two grounds are dispositive, the Court does not reach the third.

1. Plaintiff Lacks Standing to Sue Judge King

"Article III of the Constitution limits federal judicial power to 'Cases' and 'Controversies.' A party that cannot present a case or controversy within the meaning of Article III does not have standing to sue in federal court." *Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114, 1126 (10th Cir. 2013) (en banc). To establish standing, the plaintiff must plausibly allege (1) an injury in fact that is concrete and particularized and actual or imminent; (2) a causal connection between the injury and the challenged conduct; and (3) a likelihood that the injury will be redressed by a favorable decision. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992). These elements must be satisfied as to each defendant whose conduct is challenged. *See id.* at 561; *Spokeo, Inc. v. Robins*, 578 U.S. 330, 337 (2016).

As to Judge King, the Amended Complaint alleges only that, on or about April 23, 2021, Plaintiff spoke with him outside the courtroom at the Cherokee County Courthouse, and that he thereafter "established Plaintiff's Indian status" and "issued the case back" to the Cherokee County District Attorney, who then transferred the

matter to CNDC. [Dkt. 166 at 15, ¶ 52]. Plaintiff does not allege that Judge King prosecuted her, tried her, presided over any criminal case involving her, or exercised custody over her. Nor does she allege that any criminal case was filed before him in Cherokee County District Court. On the face of the Amended Complaint, the decisions to charge Plaintiff in CNDC and to pursue those charges were made by others. *See, e.g.*, [*id.* at 15-16, 17-18, ¶¶ 53, 62-69]. These allegations do not plausibly show that Plaintiff's later prosecution, conviction, or alleged collateral consequences are "fairly traceable" to Judge King's challenged conduct. *See* *Lujan*, 504 U.S. at 560-61.

The same deficiency defeats redressability. Plaintiff does not allege that Judge King presently exercises authority over her conviction, custody, her driver's license status, or any ongoing enforcement action. Nor does she identify any form of relief against Judge King that would likely redress the injuries she attributes to the later tribal prosecution. Instead, Plaintiff argues that Judge King's alleged conduct denied her a "right to choose a forum" and thereby caused her later prosecution and conviction. [Dkt. 183 at 4, 5]. She cites no authority recognizing such a federal right, and the Court has found none.

Even accepting Plaintiff's characterization of the April 2021 interaction and drawing all reasonable inferences therefrom in her favor, the Amended Complaint does not plausibly connect that single, antecedent conversation to the downstream injuries she invokes in a manner sufficient to satisfy Article III's traceability and redressability requirements. *See* *Spokeo*, 578 U.S. at 338; *Lujan*, 504 U.S. at 560-61. Plaintiff therefore lacks standing to pursue her claims against Judge King.

2. Judge King is Entitled to Absolute Judicial Immunity in His Individual Capacity

"[J]udges of courts of superior or general jurisdiction are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction, and are alleged to have been done maliciously or corruptly." *Stump v. Sparkman*, 435 U.S. 349, 355-56 (1978) (quotation omitted). Judicial immunity applies to all judicial acts unless the judge acted in the "clear absence of all jurisdiction." *Id.* at 356-57; *see Mireles v. Waco*, 502 U.S. 9, 11-12 (1991) (per curiam); *Whitesel v. Sengenberger*, 222 F.3d 861, 867 (10th Cir. 2000). It is "an immunity from suit, not just from ultimate assessment of damages." *Mireles*, 502 U.S. at 11 (citation omitted). Whether an act is "judicial" turns on "the nature and function of the act itself, *i.e.*, whether it is a function normally performed by a judge," and on "the expectations of the parties, *i.e.*, whether they dealt with the judge in his judicial capacity." *Stump*, 435 U.S. at 362. The analysis does not turn on whether the act was procedurally proper, formally undertaken in open court, or in compliance with every rule. *See id.* at 360-62; *Mireles*, 502 U.S. at 12.

Measured by that standard, the conduct alleged here is judicial in nature. Plaintiff alleges that Judge King determined her Indian status and concluded that her case did not belong in state court. [Dkt. 166 at 15, ¶ 52]. Determining whether a criminal matter is properly before a state court—*i.e.*, whether the court has jurisdiction—is a quintessential judicial function. The fact that the alleged interaction occurred outside a formal hearing or outside the courtroom does not strip the conduct of its judicial character. *See id.*; *Mireles*, 502 U.S. at 12. Indeed, Plaintiff

contends that Judge King acted outside his judicial capacity because no case was pending before him and he did not hold a proper hearing. [Dkt. 183 at 5]. Even if those procedural criticisms are accepted as true, they do not defeat judicial immunity. A judge does not lose immunity simply because a litigant believes he or she acted erroneously, or without following proper procedure. *See* *Mireles*, 502 U.S. at 12-13; *Stump*, 435 U.S. at 356-57; *Whitesel*, 222 F.3d at 867.

Nor do the pleadings plausibly allege that Judge King acted in the "clear absence of all jurisdiction." The Amended Complaint itself treats Judge King as an Oklahoma district judge confronted with a jurisdictional question arising from Plaintiff's status as an Indian defendant arrested in Indian Country. At most, Plaintiff alleges that he resolved that question incorrectly and directed to the matter the Cherokee County District Attorney. That kind of alleged error, even if assumed, is not the same as acting without subject-matter jurisdiction. *See* *Stump*, 435 U.S. at 356-57; *Whitesel*, 222 F.3d at 867. Accordingly, Plaintiff's damages claims against Judge King in his individual capacity, to the extent they rest on the April 2021 interaction, are barred by absolute judicial immunity.

3. Judge King is Entitled to Eleventh Amendment Immunity in His Official Capacity

A suit against a state official in his or her official capacity is no different from a suit against the state itself. *See* *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989); *Kentucky v. Graham*, 473 U.S. 159, 165-66 (1985). Neither a state nor a state official acting in his official capacity is a "person" subject to damages liability under § 1983. *Will*, 491 U.S. at 71. In addition, Congress did not abrogate the states'

Eleventh Amendment immunity when it enacted § 1983. *See* *Quern v. Jordan*, 440 U.S. 332, 341-45 (1979).

Those principles foreclose Plaintiff's official-capacity damages claims against Judge King. As an Oklahoma state judge, he is not a proper § 1983 damages defendant in his official capacity. *See* *Graham*, 473 U.S. at 165-66; *Will*, 491 U.S. at 71. Nor does the doctrine set forth in *Ex parte Young*, 209 U.S. 123 (1908) save Plaintiff's claims for equitable relief. *Young* permits suits for prospective relief against state officials to enjoin ongoing violations of federal law; it does not authorize relief declaring that a state official violated federal law in the past. *See* *id.* at 159-60; *Green v. Mansour*, 474 U.S. 64, 68-73 (1985); *Buchwald v. Univ. of N.M. Sch. of Med.*, 159 F.3d 487, 495 (10th Cir. 1998). Plaintiff's allegations against Judge King concern a single past interaction in April 2021, and the relief she seeks would operate retrospectively by declaring that past conduct unlawful. She does not allege an ongoing violation of federal law by Judge King that would support prospective relief under *Young*.

Section 1983 also limits injunctive relief against a judicial officer "for an act taken in his such officer's judicial capacity" unless "a declaratory decree was violated or declaratory relief was unavailable." 42 U.S.C. § 1983. Plaintiff does not allege that any declaratory decree was violated or that declaratory relief was unavailable to her. Because the conduct alleged against Judge King was judicial in nature, Plaintiff's request for injunctive relief fails on that independent statutory ground as well. For these reasons, the official-capacity claims against Judge King are barred by the

Eleventh Amendment and should be dismissed.

4. Disposition as to Judge King

Leave to amend may be denied where amendment would be futile. *See* *Jefferson Cnty. Sch. Dist. No. R-1 v. Moody's Investor's Servs., Inc.*, 175 F.3d 848, 859 (10th Cir. 1999). The defects identified here are not merely technical pleading errors. Plaintiff's allegations against Judge King are confined to a single interaction that, as pleaded, does not establish Article III standing and falls squarely within the protections of judicial and Eleventh Amendment immunity. On this record, further amendment would be futile. Judge King's motion to dismiss should therefore be granted, and all claims against him should be dismissed with prejudice.

D. CITY DEFENDANTS' MOTION TO DISMISS SHOULD BE GRANTED

City Defendants—the City, TPD, Chief King, Officer Frits, and Officer Scott—move to dismiss all claims asserted against them in the Amended Complaint. They argue that Plaintiff's federal claims are time-barred, that she fails to state any viable federal claim, and that the ICRA provides no private right of action against them. The Court finds the limitations and ICRA issues are dispositive and therefore declines to address City Defendants' remaining arguments.

1. Plaintiff's Federal Claims against City Defendants are Time-Barred

Sections 1983 and 1985 contain no express limitations period. Federal courts therefore borrow the forum state's limitations period for personal-injury actions. *Gee*, 627 F.3d at 1188-89. In Oklahoma, the applicable period is two years. 12 O.S. § 95(A)(3); *McCarty v. Gilchrist*, 646 F.3d 1281, 1289 (10th Cir. 2011) (applying

Oklahoma law). Accordingly, Plaintiff was required to bring any claims under § 1983 and § 1985(3) against City Defendants within two years of accrual.

When a claim accrues, and thus when the limitations period begins to run, is a question of federal law. *Price v. Philpot*, 420 F.3d 1158, 1162 (10th Cir. 2005). A civil-rights claim accrues "when the plaintiff knows or has reason to know of the injury which is the basis of the action." *Id.* (citation omitted) Claims arising out of "police actions toward a criminal suspect, such as arrest, interrogation, or search and seizure, are presumed to have accrued when the actions actually occur." *Johnson v. Johnson Cnty. Comm'n Bd.*, 925 F.2d 1299, 1301 (10th Cir. 1991).

All factual allegations against City Defendants arise from a single incident on April 7, 2021, when Officers Frits and Scott allegedly stopped Plaintiff's vehicle, used excessive force, arrested her without probable cause, and searched her vehicle. [Dkt. 166 at 8-10, ¶¶ 4-17]. Plaintiff alleges no subsequent conduct by City Defendants. Thus, any civil-rights claims against them accrued, at the latest, in April 2021. Plaintiff did not commence this action until August 22, 2024, more than three years later. On the face of the pleadings, those claims are untimely under Oklahoma's two-year limitations period.

Plaintiff argues that *Heck v. Humphrey*, 512 U.S. 477 (1994) delays accrual until her conviction is invalidated. [Dkt. 181 at 5]. *Heck*, however, does not toll an already accrued limitations period; it prevents accrual altogether for a narrow category of § 1983 claims that would necessarily imply the invalidity of a still-outstanding conviction or sentence. *See id.* at 486-87; *McCarty*, 646 F.3d at 1289. To

the extent Plaintiff's claims against City Defendants would necessarily imply the invalidity of her CNDC conviction, they are not cognizable at all under *Heck*; to the extent they would not, such claims accrued in 2021 and are barred by § 95(A)(3). Plaintiff also characterizes the alleged § 1985(3) conspiracy as "ongoing," but identifies no specific acts by City Defendants after April 7, 2021. The Tenth Circuit has rejected reliance on a "continuing violation" theory to revive time-barred, discrete police-action claims where the injury and its cause were immediately apparent. *See Johnson*, 925 F.2d at 1301. On this record, Plaintiff's civil-rights claims against City Defendants are untimely and should be dismissed.

2. Plaintiff's ICRA Claim Fails as a Matter of Law

Count VII asserts a claim against all defendants for alleged violations of the ICRA, 25 U.S.C. § 1302(a)(2), (7)-(8). [Dkt. 166 at 27-28]. In *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978), the Supreme Court held that the ICRA does not create a general civil cause of action in federal court for damages or declaratory and injunctive relief against tribes or tribal officers; the exclusive federal remedy Congress provided is habeas corpus under § 1303. *See id*. at 59, 67-72.

Plaintiff urges the Court to adopt Justice White's dissent in *Santa Clara Pueblo* and recognize an implied federal cause of action for equitable relief. [Dkt. 181 at 8-9]. The Court is bound by the majority opinion, however, which expressly declined to infer such a remedy and emphasized that any further enforcement mechanisms for the ICRA must come from Congress. See *id*. at 71-72. In any event, the ICRA governs tribal governments; it does not purport to regulate municipalities or municipal officers. *See id*. at 57-59. Whatever Plaintiff's arguments as to Cherokee

Nation's courts, the ICRA provides no cause of action against City Defendants. Count VII therefore fails as a matter of law as to City Defendants.

3. Disposition as to City Defendants

Because Plaintiff's § 1983 and § 1985(3) claims against the City, TPD, Chief King, Officer Frits, and Officer Scott accrued in April 2021 and are governed by a two-year limitations period, they are time-barred. Plaintiff has identified no legally cognizable basis for tolling. The civil-rights claims (Counts II, III, IV, V, VI) should therefore be dismissed with prejudice as untimely. Plaintiff's ICRA claim (Count VII) against City Defendants likewise fails as a matter of law under *Santa Clara Pueblo* and cannot be cured by amendment. Under these circumstances, further leave to amend as to City Defendants would be futile. Their motion to dismiss should be granted, and all claims against City Defendants should be dismissed with prejudice.

E. THE BOARD'S MOTION TO DISMISS SHOULD BE GRANTED

The Board moves to dismiss the Amended Complaint, arguing that it is not a proper § 1983 or § 1985(3) defendant for claims arising from the operation of CCDC and that Plaintiff's ICRA claim fails as a matter of law as to the Board. The Court agrees that Plaintiff has not stated any plausible federal claim against the Board and that the ICRA provides no cause of action against this non-tribal entity. Because those conclusions fully resolve the claims against the Board, the Court does not reach the Board's statute-of-limitations and service-of-process defenses.

1. Plaintiff Fails to State a Plausible § 1983 Claim against the Board

Plaintiff names the Board as a defendant in Counts III, IV, V, and VI, asserting

claims arising from her detention at CCDC and related harms. [Dkt. 166 at 25-27]. The Amended Complaint, however, alleges no conduct by the Board itself. In a § 1983 case, "[p]ersonal participation is an essential allegation," and the complaint must make clear "exactly who is alleged to have done what to whom." *Robbins*, 519 F.3d at 1250. Plaintiff's failure to allege any specific act or omission by the Board is, by itself, a terminal pleading defect.

To the extent Plaintiff seeks to hold the Board liable as a local governmental entity, *Monell v. Dep't of Social Servs.*, 436 U.S. 658 (1978) governs. A board of county commissioners cannot be held liable under § 1983 on a theory of *respondeat superior* or vicarious liability. *Id*. at 691-94. Section 1983 liability attaches only when an official policy or custom of the Board is the "moving force" behind the alleged constitutional injury. *Id*. at 694; *see Bd. of Cnty. Comm'rs v. Brown*, 520 U.S. 397, 403-04 (1997). Identifying the relevant policymaker is a question of state law. *See Pembaur v. City of Cincinnati*, 475 U.S. 469, 482-83 (1986); *City of St. Louis v. Praprotnik*, 485 U.S. 112, 123-25 (1988).

Under Oklahoma law, the sheriff is ordinarily charged with custody and operation of the county jail. *See* 19 O.S. § 513; 57 O.S. § 47, 52. Oklahoma law permits counties to create public trusts to construct and operate jails, and in that event the trust's affairs "shall be separate and independent from the affairs of the beneficiary" in matters of management and operation. 60 O.S. § 176.1. The Board represents, and Plaintiff does not meaningfully dispute, that CCDC is operated by CCGBA, not by the Board. [Dkt. 171 at 11-17]. The Court finds that, under Oklahoma law, the Board

lacks final policymaking authority over CCDC operations.

The Tenth Circuit has held that a board of county commissioners may not be held liable under § 1983 for the acts of a separate entity absent a showing that the entity was executing an unconstitutional policy or custom of the board itself. *See* *Jantzen v. Hawkins*, 188 F.3d 1247, 1259 (10th Cir. 1999). Plaintiff alleges no Board policy, practice, or custom governing CCDC, and no factual allegation indicates that any CCDC employee—including the officer she identifies as "Blue"—was implementing a Board policy when the alleged misconduct occurred. Her theory that the Board is liable because Cherokee County is CCGBA's beneficiary does not satisfy *Monell* or *Jantzen*. [Dkt. 182 at 6]. Accordingly, the Amended Complaint does not state a plausible § 1983 claim against the Board.

2. Plaintiff Fails to State a Plausible § 1985(3) Claim against the Board

To state a claim under § 1985(3), Plaintiff must allege: (1) a conspiracy; (2) to deprive her of equal protection or equal privileges and immunities; (3) an act in furtherance of the conspiracy; and (4) an injury or deprivation resulting therefrom. *See* *Tilton v. Richardson*, 6 F.3d 683, 686 (10th Cir. 1993). The Tenth Circuit requires that conspiracy allegations be supported by specific facts showing agreement and concerted action; "conclusory allegations" are insufficient. *Durre v. Dempsey*, 869 F.2d 543, 545 (10th Cir. 1989). Courts in this circuit also apply *Monell*'s limitations to § 1985 claims against local governmental entities; a county board cannot be held vicariously liable under § 1985 for the acts of others absent an unconstitutional policy or custom that was the moving force behind the alleged conspiracy. *See, e.g.*, *Galindo*

v. Taylor, 723 F. Supp. 3d 1008, 1022 n.3 (D. Kan. 2024); *Yang v. Okla. ex rel. Okla. State Bureau of Narcotics & Dangerous Drugs Control*, No. CIV-24-1067-R, 2025 WL 1559157, at *4 n.6 (W.D. Okla. June 2, 2025).

Plaintiff describes, in broad terms, an alleged multi-sovereign conspiracy to misapply *McGirt v. Oklahoma*, 591 U.S. 894 (2020), channel prosecutions into Cherokee Nation courts, and shield state actors behind tribal immunity. [Dkt. 166 at 23-24, ¶¶ 8-9; Dkt. 182 at 5]. As to the Board specifically, however, she identifies no Board policy, no Board decision, and no Board member or employee who joined any agreement. Her own Amended Complaint identifies "UNKNOWN [CCDC] OFFICERS JOHN & JANE DOES 1-50" as "employees of [CCGBA]," not the Board. [Dkt. 166 at 1]. Her references to "County employees, likely cross-deputized with the Cherokee Nation" are speculative and unsupported by concrete factual allegations. [Dkt. 182 at 5]. Because Plaintiff has not alleged facts showing an agreement or "meeting of the minds" involving the Board, or a Board policy or custom that drove any conspiracy, her § 1985(3) claim against the Board fails as a matter of law.

3. Plaintiff's ICRA Claim Fails as a Matter of Law

Plaintiff also purports to assert a claim under § 1302 of the ICRA. [Dkt. 166 at 27-28]. As noted above, the ICRA imposes certain constraints on tribal governments' exercise of self-government. *Santa Clara Pueblo*, 436 U.S. at 61. The Supreme Court held in *Santa Clara Pueblo* that the ICRA does not create an implied federal cause of action for damages or declaratory and injunctive relief against tribes or tribal officials; the sole federal remedy Congress provided is habeas corpus under § 1303. *Id*. at 59, 66-72.

Whatever Plaintiff's criticisms of the Cherokee Nation courts, the ICRA does not regulate to counties or county boards and does not authorize a civil action against the Board. Plaintiff cites no authority extending the ICRA to non-tribal entities and identifies no ICRA obligation that the Board purportedly violated. Her reliance on Justice White's dissent in *Santa Clara Pueblo* does not alter the controlling effect of the majority opinion. Plaintiff's ICRA claim against the Board therefore fails as a matter of law.

4. Disposition as to the Board

Under Oklahoma law, the Board has no policymaking authority over CCDC's operations, and the Amended Complaint alleges no Board policy, custom, or act that could give rise to § 1983 or § 1985(3) liability. Plaintiff thus fails to state any plausible federal claim against the Board. Her ICRA claim likewise fails because the ICRA applies to tribal governments and, as construed in *Santa Clara Pueblo*, does not create a federal cause of action against non-tribal entities such as the Board. These are legal defects that cannot be cured by further amendment. The Board's motion to dismiss should therefore be granted, and all claims against the Board should be dismissed with prejudice.

F. CHEROKEE DEFENDANTS' MOTION TO DISMISS SHOULD BE GRANTED

Cherokee Defendants—Cherokee Nation, CNDC, CNSC, Chief Hoskin, Judge Barteaux, Judge Page, AG Harsha, and AAG Crosslin—move to dismiss the Amended Complaint on multiple grounds. The Court concludes that two grounds are dispositive: (1) tribal sovereign immunity bars all non-habeas claims against Cherokee Nation, its courts, and its officers acting in their official capacities; and (2)

Plaintiff's habeas claim under 25 U.S.C. § 1303 fails as a matter of law. Because those conclusions fully resolve the claims against Cherokee Defendants, the Court does not address their remaining arguments.

1. Tribal Sovereign Immunity Bars Plaintiff's Non-Habeas Claims against Cherokee Defendants

Indian tribes are "domestic dependent nations" that retain inherent sovereign authority, *Cherokee Nation v. Georgia*, 30 U.S. 1, 13, 17 (1831), including "common-law immunity from suit traditionally enjoyed by sovereign powers," *Mich. v. Bay Mills Indian Cmty.*, 572 U.S. 782, 788 (2014) (*quoting* *Santa Clara Pueblo*, 436 U.S. at 58). That immunity extends to suits in federal court and may be overcome only where Congress has unequivocally authorized the suit or the tribe has expressly waived its immunity. *See* *Kiowa Tribe of Okla. v. Mfg. Techs., Inc.*, 523 U.S. 751, 754-55 (1998); *Santa Clara Pueblo*, 436 U.S. at 58-59. Tribal sovereign immunity is a matter of subject-matter jurisdiction and must be resolved at the outset. *E.F.W. v. St. Stephen's Indian High Sch.*, 264 F.3d 1297, 1302-03 (10th Cir. 2001). That immunity extends not only to the tribe itself, but also to its courts and other tribal arms, such as CNDC and CNSC. *See* *Lewis v. Clarke*, 581 U.S. 155, 161-63 (2017). It likewise extends to claims against tribal officers in their official capacities when the tribe is the real party in interest. *Id*.

Plaintiff's non-habeas claims against Cherokee Defendants arise entirely from official tribal conduct: her prosecution in CNDC, orders entered by CNDC and CNSC, the actions of tribal prosecutors, and her broader challenge to the Cherokee Nation courts' authority to exercise criminal jurisdiction over her. [Dkt. 166 at 25-30]. She

seeks damages and declaratory relief on the theory that those courts were unlawfully constituted and their judgments void. [*Id.* at 30]. On the face of the Amended Complaint, these claims challenge official acts taken under color of tribal authority. Cherokee Nation is therefore the real party in interest, even where Plaintiff has named individual tribal officials in "individual" capacities.

Plaintiff identifies no waiver by the Cherokee Nation of its sovereign immunity for these claims, and the Court is aware of none. Nor has Congress abrogated tribal sovereign immunity for the non-habeas claims Plaintiff asserts. Section 1983 does not authorize suits against tribes or tribal entities. *See, e.g.*, *Burrell v. Armijo*, 456 F.3d 1159, 1173-74 (10th Cir. 2006); *Polk Cnty. v. Dodson*, 454 U.S. 312, 315-16 (1981). More broadly, tribal sovereign immunity "is a matter of federal law and is not subject to diminution by the States," and it may be displaced only be an "unequivocal" expression of congressional intent. *Kiowa Tribe of Okla.*, 523 U.S. at 756-57. Nothing in § 1985(3), or in the declaratory-judgment statutes Plaintiff invokes, reflects such an intent, and courts have applied tribal sovereign immunity to bar civil-rights and declaratory claims against tribes absent a clear waiver or abrogation. *See, e.g.*, *Santa Clara Pueblo*, 436 U.S. at 59, 67-72.; *E.F.W.*, 264 F.3d at 1224-48; *Miner Elec. v. Muscogee (Creek) Nation*, 505 F.3d 1007, 1010 (10th Cir. 2007); *Means v. Wilson*, 522 F.2d 833, 838 (8th Cir. 1975).

Plaintiff again asks the Court to adopt Justice White's *Santa Clara Pueblo* dissent and recognize a broader federal remedy [Dkt. 216 at 13], but this Court is bound by the majority, which held that Congress "deliberately" chose not to authorize

such actions and instead provided only habeas relief under § 1303. *Santa Clara Pueblo*, 436 U.S. at 61, 67-72. Accordingly, tribal sovereign immunity bars Plaintiff's non-habeas claims against Cherokee Defendants to the extent those claims seek relief that would operate against the tribe. Those claims should therefore be dismissed for lack of subject-matter jurisdiction.

2. Plaintiff's ICRA Habeas Claim Fails as a Matter of Law

The ICRA's habeas provision, 25 U.S.C. § 1303, provides that "[t]he privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe." The Tenth Circuit has held that § 1303's "detention" requirement is analogous to the "in custody" requirement in other federal habeas statutes. *Valenzuela v. Silversmith*, 699 F.3d 1199, 1203 (10th Cir. 2012).

Plaintiff was convicted in CNDC, sentenced to time served, and fined. [Dkt. 166 at 22, ¶ 85]. She acknowledges that she is no longer confined or otherwise detained by the Cherokee Nation. [*Id.* at 8, ¶ 3; Dkt. 215 at 14]. A fine, standing alone, is insufficient to satisfy the custody requirement. *See Calhoun v. Attorney General of Colo.*, 745 F.3d 1070, 1073-74 (10th Cir. 2014). Plaintiff's asserted collateral consequences—including reputational harm and driver's-license complications—are not the kind of present, severe restraints on liberty that satisfy § 1303's "detention" requirement under controlling Tenth Circuit precedent.

In addition, Plaintiff's habeas claim in this case is duplicative of the Habeas Case filed in this Court, which challenges the same CNDC conviction on the same jurisdictional theories. A district court may dismiss a duplicative action as part of its

inherent authority to manage its docket. *See* *Veitia Piedra v. Aguirre*, 125 Fed. Appx. 968, 969 (10th Cir. 2005) (unpublished). Where, as here, the later-filed habeas claim mirrors the earlier Habeas Case that remains pending, dismissal of the duplicative claim is appropriate.

Finally, Plaintiff failed to exhaust available tribal remedies before seeking federal habeas review. The Supreme Court and the Tenth Circuit require exhaustion of tribal remedies as a matter of comity and respect for tribal self-government. *See* *Nat'l Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845, 856-57 (1985); *Valenzuela*, 699 F.3d at 1207-08; *Chegup v. Ute Indian Tribe of Uintah & Ouray Reservation*, 28 F.4th 1051, 1070 (10th Cir. 2022). Plaintiff initiated an appeal to CNSC but did not comply with that court's filing-fee and briefing requirements, and CNSC dismissed her appeal. [Dkts. 205-18, 205-19, 205-20, 205-22]. The record reflects that the tribal court provided a mechanism to address Plaintiff's indigency and to pursue appellate review; Plaintiff did not complete that process. Plaintiff contends that exhaustion should be excused because CNDC and CNSC allegedly lacked jurisdiction and because transcript costs made appellate review practically unavailable. [Dkt. 216 at 16-17]. The exceptions to tribal exhaustion recognized in *Nat'l Farmers*, however, are narrow and do not encompass a generalized disagreement with the tribal courts' jurisdictional ruling or fee practices. *See* *id*. at 853-57. On the pleadings and record referenced by the parties, Plaintiff has not shown that tribal remedies were unavailable or futile.

Because Plaintiff is not in tribal "detention" within the meaning of § 1303,

because her habeas claim in this case duplicates a separate pending habeas action, and because she failed to exhaust tribal remedies, she fails to state a viable ICRA habeas claim.

3. Disposition as to Cherokee Defendants

For these reasons, Cherokee Defendants' motion to dismiss should be granted. Plaintiff's non-habeas claims against Cherokee Defendants (Counts IV, V, VI, VII, VIII) should be dismissed for lack of subject-matter jurisdiction based on tribal sovereign immunity. Plaintiff's ICRA habeas claim (Count I) against Cherokee Defendants should be dismissed because it fails as a matter of law. All claims against Cherokee Defendants should be dismissed with prejudice.

III. THE MOTION TO QUASH SERVICE

A. STANDARD OF REVIEW

Rule 4(m) of the Federal Rules of Civil Procedure requires that a defendant be served within 90 days after the complaint is filed. If service is not made within that period, "the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice … or order that service be made within a specified time." Fed. R. Civ. P. 4(m). If the plaintiff shows good cause for the failure, "the court must extend the time for service for an appropriate period." *Id*.

The Tenth Circuit uses a two-step framework. First the Court must determine whether Plaintiff has shown "good cause" for the failure to effect timely service. If good cause is shown, extension is mandatory. *Espinoza v. United States*, 52 F.3d 838, 841 (10th Cir. 1995). If good cause is not shown, the Court must still consider whether a permissive, retroactive extension is warranted in the exercise of its discretion. *Id*.

at 841-42. The Tenth Circuit construes Rule m's good cause requirement "narrowly." *Despain v. Salt Lake Area Metro Gang Unit*, 13 F.3d 1436, 1438 (10th Cir. 1994). Inadvertence, neglect, or ignorance of the rules generally does not establish good cause. *In re Kirkland*, 86 F.3d 172, 174-75 (10th Cir. 1996). *Pro se* status, by itself, does not excuse noncompliance with the Rules. *Ogden v. San Juan Cnty.*, 32 F.3d 452, 455 (10th Cir. 1994) (*citing Nielsen v. Price*, 17 F.3d 1276, 1277 (10th Cir. 1994)).

When deciding whether the grant a discretionary extension absent good cause, courts in this circuit consider factors such as: (1) whether the statute of limitations would bar a refiled action; (2) the plaintiff's efforts to effect service; (3) the complexity of serving the defendant (particularly when the defendant is a federal agency); (4) whether the plaintiff is proceeding *pro se*; and (5) prejudice to the defendant. *Espinoza*, 52 F.3d at 841; *Sullivan v. Univ. of Kan. Hosp. Auth.*, 844 Fed. Appx. 43, 52 (10th Cir. 2021) (unpublished); *Shepard v. U.S. Dep't of Veterans Affs.*, 819 Fed. Appx. 622, 624 (10th Cir. 2020) (unpublished). The fact that limitations have run does not, standing alone, establish good cause or mandate an extension. *Despain*, 13 F.3d at 1439; *May v. Okla. Dep't of Corr.*, 2000 WL 633244, at *2 (10th Cir. May 17, 2000) (unpublished).

Insufficient service of process deprives the Court of personal jurisdiction over a defendant. *See Fed. Deposit Ins. Corp. v. Oaklawn Apts.*, 959 F.2d 170, 174 (10th Cir. 1992). A court "cannot proceed to the merits of a case over which it does not have jurisdiction." *OMI Holdings, Inc. v. Royal Ins. Co. of Can.*, 149 F.3d 1086, 1090 (10th Cir. 1998) (quotation omitted).

B. CCGBA'S MOTION TO QUASH SERVICE SHOULD BE GRANTED

CCGBA moves under Rules 12(b)(2) and 12(b)(5) to quash service and dismiss the claims asserted against it, contending that Plaintiff failed to effect timely and proper service under Rule 4(m). Plaintiff, who was proceeding *pro se* and *in forma pauperis* at the time of service, asks the Court to excuse her noncompliance and grant a retroactive extension of time. Applying *Espinoza*'s two-step framework, the Court concludes that Plaintiff has not shown good cause and that a discretionary extension is not warranted on this record.

1. Plaintiff Failed to Timely Serve CCGBA under Rule 4(m)

Plaintiff filed this action on August 22, 2024. [Dkt. 2]. Under Rule 4(m), she was required to serve each defendant within 90 days, *i.e.*, by November 20, 2024. On September 26, 2024, the Court notified Plaintiff of her *in forma pauperis* status and directed her to complete the USM-285 form so that summons could be prepared and delivered to the U.S Marshals for service. [Dkt. 8]. On November 19, 2024—one day before the 90-day deadline—she moved for a 90-day extension of time to serve defendants. [Dkt. 9]. The Court granted only a 30-day extension and ordered that service be completed by December 20, 2024. [Dkt. 10].

Plaintiff did not request issuance of summons until December 23, 2024, three days after the Court's extended deadline. [Dkt. 11]. The U.S. Marshal did not serve CCGBA until January 2, 2025. [Dkt. 115]. Proof of service was filed on January 16, 2025. [*Id.*]. On this undisputed chronology, service on CCGBA occurred after both the original 90-day period and the Court-ordered December 20 deadline.

Because Plaintiff was responsible for initiating service through the USM-285

process and did not do so until after the extended deadline had passed, service on CCGBA was untimely under Rule 4(m). *See* Oaklawn Apts., 959 F.2d at 174 (the plaintiff bears the burden of establishing valid service). The Court therefore lacks personal jurisdiction over CCGBA unless Plaintiff can show good cause for her failure or the Court exercises its discretion to grant a retroactive extension. *See* Espinoza, 52 F.3d at 841.

2. Plaintiff has Not Shown Good Cause for Her Failure to Serve CCGBA by the Extended Deadline

The "good cause" provision of Rule 4(m) "should be read narrowly to protect only those plaintiffs who have been meticulous in their efforts to comply with the Rule." Despain, 13 F.3d at 1438 (quotation omitted). Inadvertence, neglect, or misunderstanding of the rules ordinarily does not constitute good cause, even for pro se litigants. *See* In re Kirkland, 85 F.3d at 176; Ogden, 32 F.3d at 455. Plaintiff asks the Court to find good cause based on her *pro se in forma pauperis* status, the complexity of this litigation, and her health issues. She notes that she requested an extension before the initial 90-day period expired and that she submitted a "voluminous" number of summons requests near the extended deadline. [Dkt. 180 at 2-4]. She also points to the Court's December 23 issuance of summons as evidence that the Court itself understood her circumstances.

These considerations are not enough. Plaintiff had USM-285 forms by September 26, 2024, but waited nearly three months—until December 20, 2024—to submit them to approximately 60 defendants at once. She did so knowing that the extended service deadline expired that same day. The fact that the Clerk's Office and

U.S. Marshals could not process that volume of summons requests and service before the deadline does not transform Plaintiff's last-minute filing into "meticulous" compliance with Rule 4(m). *See* *Despain*, 13 F.3d at 1438-39; *In re Kirkland*, 86 F.3d at 176.

Moreover, Plaintiff did not move for a further extension after December 20, 2024, nor did she notify the Court that her summons requests had not been processed by the deadline. Instead, she allowed service to proceed outside the extended period and then attempted to justify the delay only in response to CCGBA's motion to quash. On these facts, Plaintiff has not met her burden to show that she diligently attempted to comply with Rule 4(m).

The Court recognizes that Plaintiff was proceeding pro se at the time and that the advisory committee note to Rule 4(m) instructs courts to "take care to protect *pro se* plaintiffs from consequences of confusion or delay attending the resolution of an *in forma pauperis* petition." Fed. R. Civ. P. 4(m) advisory committee's note (1993). But *pro se* status does not relieve a litigant of the obligation to comply with the Federal Rules of Civil Procedure. *Ogden*, 32 F.3d at 455. Here, Plaintiff was expressly notified of the service requirements and given both the USM-285 forms and an extended deadline. The Court therefore concludes that she has not shown good cause within the meaning of Rule 4(m).

3. A Discretionary Extension of Time for Service is Not Warranted

Because Plaintiff has not shown good cause, the Court must decide whether to exercise its discretion to grant a retroactive extension. *See* *Espinoza*, 52 F.3d at 841-

42. The Court considers the non-exclusive factors identified in *Espinoza* and its progeny.

a. Statute of Limitations

The first factor is whether the statute of limitations would bar a refiled action. *Id.* at 842. Plaintiff notes that any refiling of claims against CCGBA may now be time-barred and argues this "heavily favors" a discretionary extension. [Dkt. 180 at 5].

It is true that dismissal for untimely service may effectively bar refiling in some circumstances. But the Tenth Circuit has made clear that this fact, standing alone, does not establish good cause or require an extension. *Despain*, 13 F.3d at 1439; *May*, 2000 WL 633244, at *2. Moreover, as CCGBA points out, Plaintiff's claims arising from the April 7, 2021 incident were already barred by Oklahoma's two-year statute of limitations when she filed this action on August 22, 2024. *See McCarty*, 646 F.3d at 1289. A retroactive extension of time for service cannot revive claims that were untimely when filed.

As to Plaintiff's claims arising from the August 22 to September 2, 2022 detention, she filed this action on the last day of the limitations period, further narrowing the margin for error on service. In these circumstances—where some claims were already time-barred and others rested on a last-day filing—the limitations factor does not weigh strongly in favor of a retroactive extension.

b. Plaintiff's Efforts to Achieve Timely Service

Plaintiff emphasizes that she requested an extension before the initial 90-day period expired and that she eventually caused the U.S. Marshals to serve CCGBA. [Dkt. 180 at 3]. The Court credits those efforts. At the same time, the record shows a

consistent pattern of waiting until the last day to act, both as to the limitations period and as to the service deadline and extended deadline. Plaintiff did not use the three months between September 26, and December 20, 2024 to stagger or prioritize service, nor did she seek further relief when it became clear the deadline would be missed. On balance, this factor weights against a discretionary extension.

c. Complexity of Service

The third factor looks to the complexity of service, particularly when the defendant is a federal agency. *Sullivan*, 844 Fed. Appx. at 52; *Shepard*, 819 Fed. Appx. at 624. CCGBA is a local governmental authority; service on it was not inherently complex. Plaintiff was proceeding through the U.S. Marshals, but that procedure was clearly explained in the Court's September 26 Order. Thus, the complexity factor does not materially favor an extension.

d.* Pro Se *Status

Plaintiff's *pro se* and *in forma pauperis* status does weight in favor of some leniency. *See Espinoza*, 52 F.3d at 842 n.8. But *pro se* status is not dispositive. *Ogden*, 32 F.3d at 455. The Court has already afforded leniency by granting an extension and by carefully reviewing whether a further extension is warranted. Plaintiff was repeatedly advised of the requirement and deadlines and nonetheless failed to initiate service until after those deadlines expired. This factor therefore carries limited weight.

e. Prejudice to CCGBA

Finally, the Court considers prejudice. Plaintiff argues the delay between December 20 and January 2 was "minimal" and non-prejudicial, especially given that

CCGBA received actual notice and has had a fair opportunity to defend. [Dkt. 180 at 4-5]. CCGBA responds that subjecting it to suit without proper service is itself prejudicial and undermines Rule 4(m)'s enforcement. [Dkt. 172 at 5; Dkt. 197 at 5].

The Court agrees that the actual prejudice to CCGBA from the short delay is modest. Nonetheless, Rule 4(m) reflects a deliberate balance between plaintiffs' interest in reaching the merits and defendants' interest in timely, orderly notice and joinder. *See* *Henderson v. United States*, 517 U.S. 654, 662-63 (1996). On this record, the combination of Plaintiff's repeated last-minute filings, her failure to seek a further extension, and the absence of good cause weighs more heavily than the slight delay in service.

f. Overall Balance

Considering all the factors, the Court concludes that a discretionary, retroactive extension of time for service is not warranted. Plaintiff was warned of the service requirements, obtained an extension, and still failed to ensure that service on CCGBA was initiated and completed within the extended period. Granting a retroactive extension on these facts would effectively render the Court's December 20, 2024 deadline advisory and would undermine Rule 4(m)'s role in promoting diligence and efficient case management.

4. Disposition as to CCGBA

Because Plaintiff did not serve CCGBA within the time provided by Rule 4(m) and the Court's December 20, 2024 Order, because she has not shown good cause for her failure, and because a discretionary extension is not warranted, CCGBA's motion to quash should be granted. The summons issued to CCGBA should be quashed, and

the claims asserted against CCGBA in the Amended Complaint should be dismissed without prejudice for lack of personal jurisdiction due to insufficient service of process.

IV. CONCLUSION

Plaintiff has asked the Court to revisit nearly every governmental actor involved in her criminal proceedings. Federal law does not permit that result. The Constitution and Congress define the authority of the federal courts, and this Court's duty is to exercise that authority faithfully, not to expand it. Judicial power is measured not only by what a court may decide, but also by what it must decline to decide.

IT IS THEREFORE THE RECOMMENDATION OF THIS COURT that Judge King's motion to dismiss [Dkt. 169] be **GRANTED** and that all claims against Cherokee District Court Judge Joshua King be **DISMISSED with prejudice**. Plaintiff has failed to establish Article III standing as to Judge King, and, in any event, her claims (Counts I, IV, V, VI, and VII) are barred by absolute judicial immunity in his individual capacity and by Eleventh Amendment immunity in his official capacity, as set forth above.

IT IS FURTHER RECOMMENDED that City Defendants' motion to dismiss [Dkt. 170] be **GRANTED** and that all claims against the City of Tahlequah, the Tahlequah Police Department, Police Chief King, Officer Frits, and Officer Scott be **DISMISSED with prejudice**. Plaintiff's claims under 42 U.S.C. §§ 1983 and 1985(3) (Counts II, III, IV, V, and VI) are time-barred as to each City Defendant, and her

ICRA claim (Count VII) fails as a matter of law for the reasons stated above.

IT IS FURTHER RECOMMENDED that the Board's motion to dismiss [Dkt. 171] be **GRANTED** and that all claims against the Board of County Commissioners of Cherokee County be **DISMISSED with prejudice**. Plaintiff has failed to state any plausible claim under 42 U.S.C. §§ 1983 or 1985(3) (Counts III, IV, V, and VI) against the Board, and her ICRA claim (Count VII) likewise fails as a matter of law, for the reasons discussed above.

IT IS FURTHER RECOMMENDED that Cherokee Defendants' motion to dismiss [Dkt. 205] be **GRANTED** and that all claims against the Cherokee Nation, Cherokee Nation District Court, Cherokee Nation Supreme Court, Principal Chief Hoskin, Judge Timothy Barteaux, Judge Amy Page, Attorney General Harsha, and Assistant Attorney General Crosslin be **DISMISSED with prejudice**. Plaintiff's non-habeas claims (Counts IV, V, VI, VII, and VIII) are barred by tribal sovereign immunity, and her ICRA habeas claim (Count I) fails as a matter of law, as explained above.

IT IS FURTHER RECOMMENDED that the CCGBA's motion to quash service [Dkt. 172] be **GRANTED** and that all claims against the Cherokee County Governmental Building Authority be **DISMISSED without prejudice** for lack of personal jurisdiction due to insufficient service of process under Fed. R. Civ. P. 4(m).

The parties are herewith given 14 days from the date of service of this Report and Recommendation to file any objections with the Clerk of the Court. Any such objection shall be limited to 10 pages in length. Failure to object to the Report and

Recommendation within 14 days will preclude review of this decision by the District Court. *See* 18 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b).

DATED this 30th day of June, 2026.



JASON A. ROBERTSON
UNITED STATES MAGISTRATE JUDGE