

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
OKLAHOMA

Edward J. McGraw v. Sheriff Chris Morris and Unknown Deputy
Officers in their Official Capacities, and Board of County
Commissioners of Pittsburg County, Oklahoma

McGraw · No. 25-CV-335-DES · Decided April 16, 2026

SUMMARY

The Eastern District of Oklahoma grants defendants’ motion to dismiss a pro se 42 U.S.C. § 1983 action arising from a search of the plaintiff’s residence and his subsequent arrest. The court concludes that the officers acted under Choctaw Nation authority rather than under color of state law, depriving the court of subject-matter jurisdiction over the § 1983 claims. The court also deems the motion confessed based on the plaintiff’s failure to respond and dismisses the claims without prejudice.

CASE DETAILS

COURT	United States District Court for the Eastern District of Oklahoma
WRITING FOR THE COURT	D. Edward Snow
JURISDICTION	United States District Court for the Eastern District of Oklahoma
DECIDED	April 16, 2026
DOCKET	25-CV-335-DES
DISPOSITION	dismissed
PROCEDURAL POSTURE	Plaintiff brought a pro se action under 42 U.S.C. § 1983 alleging Fourth Amendment violations arising from a search and arrest, along with an intentional infliction of emotional distress claim. Defendants moved to dismiss under Federal Rule of Civil Procedure 12(b)(1), (2), (5), and (6).
STANDARD OF REVIEW	For a facial Rule 12(b)(1) challenge, the court accepts the complaint's allegations as true and applies a review similar to Rule 12(b)(6). For a factual Rule 12(b)(1) challenge, the court may consider affidavits and other materials and need not presume the truth of the complaint's factual allegations. Even when a plaintiff fails to respond to a Rule 12(b)(6) motion, the court must examine the complaint to determine whether it states a claim.

TOPICS

subject matter jurisdiction

section 1983

tribal jurisdiction

motions to dismiss

civil procedure

PRACTICE AREAS

civil rights

federal courts

Native American law

civil procedure

QUESTIONS PRESENTED

1. Whether Plaintiff's § 1983 claims could proceed when the challenged conduct was allegedly undertaken under Choctaw Nation authority rather than under color of state law.
2. Whether Defendants' motion to dismiss could be deemed confessed because Plaintiff failed to respond under the applicable local rules.
3. Whether the court was required to independently examine the complaint despite Plaintiff's failure to respond to the motion to dismiss.

HOLDINGS

1. A § 1983 action requires deprivation of a federally protected right by an actor acting under color of state law. Because the officers executed the search and arrest under Choctaw Nation authority rather than state authority, Plaintiff lacked the essential jurisdictional predicate for his § 1983 claims, and the court lacked subject-matter jurisdiction.
2. Because Plaintiff failed to respond within the period required by Local Rule 7.1(d), the court deemed Defendants' motion to dismiss confessed under Local Rule 7.1(g).
3. Even though Plaintiff failed to respond to the motion, the court was required to examine the complaint and determine whether it stated a claim upon which relief could be granted.

KEY QUOTATIONS

“Thus, “[a] § 1983 action is unavailable for persons alleging deprivation of constitutional rights under color of tribal law.””

“For the reasons set forth herein, the Court concludes that the search, seizure, and subsequent arrest of Plaintiff were carried out pursuant to tribal authority under a Choctaw Nation warrant, and not under color of state law as required to maintain a claim under 42 U.S.C. § 1983.”

FACTUAL BACKGROUND

Plaintiff, a Native American tribal member, alleged that officers unlawfully searched his residence and arrested him, violating the Fourth Amendment, and that the conduct caused intentional emotional distress. According to the motion materials, a cross-deputized Choctaw Nation and Pittsburg County officer executed a Choctaw Nation search warrant with two other cross-deputized deputies. Plaintiff was found with twelve firearms and was arrested under Choctaw Nation authority; the Choctaw Nation later charged him under its tribal code.

PROCEDURAL HISTORY

Plaintiff filed the complaint concerning a search of his residence and subsequent arrest. Defendants moved to dismiss, and Plaintiff did not respond within the time required by the local rules. Defendants then moved to deem the motion confessed. The court deemed the motion confessed, independently reviewed the complaint, granted the motion to dismiss, and dismissed the claims without prejudice for lack of subject-matter jurisdiction.

DISPOSITION

dismissed

CASES CITED

- Bowdish v. Fed. Express Corp., 699 F. Supp. 2d 1306, 1326 (W.D. Okla. 2010)
- Issa v. Comp USA, 354 F.3d 1174, 1178 (10th Cir. 2003)
- Holt v. United States, 46 F.3d 1000, 1002-03 (10th Cir. 1995)
- Polk County v. Dodson, 454 U.S. 312, 315 (1981)
- David v. City & County of Denver, 101 F.3d 1344, 1353 (10th Cir. 1996)
- West v. Atkins, 487 U.S. 42, 49 (1988)
- Schaffer v. Salt Lake City Corp., 814 F.3d 1151, 1155 (10th Cir. 2016)
- Felder v. Casey, 487 U.S. 131, 141 (1988)
- United States v. Hopson, 150 F.4th 1290, 1299 (10th Cir. 2025)
- United States v. Wheeler, 435 U.S. 313, 322-23 (1978)
- McGirt v. Oklahoma, 591 U.S. 894, 898 (2020)
- Negonsott v. Samuels, 507 U.S. 99, 102-03 (1993)
- Ross v. Neff, 905 F.2d 1349, 1353 (10th Cir. 1990)
- Barrick v. Kasbaum, No. CIV-23-129-JFH-GLJ, 2025 WL 2993764, at *3 (E.D. Okla. July 9, 2025)
- Burrell v. Armijo, 456 F.3d 1159, 1174 (10th Cir. 2006)

OPINION

EDWARD J. MCGRAW v. SHERIFF CHRIS MORRIS and UNKNOWN DEPUTY OFFICERS
in their Official Capacities, and BOARD OF COUNTY COMMISSIONERS OF PITTSBURG
COUNTY, OKLAHOMA
PER CURIAM.
IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA
EDWARD J. MCGRAW,)
) Plaintiff,)) v.) Case No. 25-CV-335-DES)
SHERIFF CHRIS MORRIS and UNKNOWN)
DEPUTY OFFICERS in their Official Capacities,)

and BOARD OF COUNTY COMMISSIONERS)
OF PITTSBURG COUNTY, OKLAHOMA,)
) Defendants.)

OPINION AND ORDER

This matter comes before the Court on Defendants, Sheriff Chris Morris and the Board of County Commissioners' ("Defendants") Motion to Dismiss Plaintiff's claims pursuant to Fed. R. Civ. P. 12(b)(1), (2), (5), and (6). (Docket No. 11). For the reasons set forth below, Defendants' Motion to Dismiss is GRANTED. I. Background Pro se Plaintiff, Edward J. McGraw, ("Plaintiff") filed this 42 U.S.C. § 1983 action against Defendants, for the alleged violations of Plaintiff's Fourth Amendment rights under the United States Constitution and for the alleged intentional infliction of emotional distress. (Docket No. 2 at 1). Plaintiff contends that the violations stemmed from an unlawful search of his house which led to his arrest. Id. at 4. Defendants argue that Pittsburg County Sheriff's Office Investigator Michael Glasco ("Glasco"), in his capacity as a cross-deputized Choctaw Nation Police Officer, was contacted by the Choctaw Nation Domestic Violence Center regarding allegations that Plaintiff, who is a Native American Tribal Member, was a convicted felon in possession of firearms and child pornography. Id. at 7-8. A Choctaw Nation search warrant for Plaintiff's residence was granted by a Choctaw Nation Judge, which Glasco and two other Pittsburg County Sheriff's Deputies who were cross deputized with the Choctaw Nation executed on September 27, 2023. Id. at 8. During the search warrant execution, Plaintiff was found to be in possession of twelve firearms and Glasco placed Plaintiff under arrest pursuant to the authority granted to him by the Choctaw Nation and under tribal law. Id. On September 28, 2023, the Choctaw Nation charged Plaintiff with three counts of carrying a firearm after a felony conviction, pursuant to Choctaw Tribal Code 1283.6. Id. On October 30, 2025, Defendants filed their Motion to Dismiss Plaintiff's Complaint, pursuant to Fed. R. Civ. P. 12(b)(1), (2), (5) and (6), for lack of subject matter jurisdiction, lack of personal jurisdiction, insufficient service of process, and failure to state a claim upon which relief can be granted. (Docket No. 11 at 7). Plaintiff had until November 13, 2025 to respond to Defendants' Motion to Dismiss but failed to do so. Because Plaintiff never responded to Defendants' Motion to Dismiss, Defendants filed a Motion to Deem Motion to Dismiss Confessed on February 20, 2026. (Docket No. 12). Pursuant to Local Rule 7.1(d), all parties opposing a motion are required to file a response within fourteen (14) days from the date the motion was filed. When a party fails to respond to a motion, the motion may be deemed confessed. See *Bowdish v. Fed. Express Corp.*, 699 F. Supp. 2d 1306, 1326 (W.D. Okla. 2010) (deeming issue confessed where responding party failed to address it). Local Rule 7.1(g) specifically allows a court to grant a motion for confession of judgment fourteen (14) days after filing. Accordingly, the Court finds Plaintiff has confessed Defendants' Motion to Dismiss. However, "even if a plaintiff does not file a response to a motion to dismiss for failure to state a claim, the district court must still examine the allegations in the plaintiff's complaint and determine whether the plaintiff has stated a claim upon which relief can be granted." *Issa v. Comp USA*, 354

F.3d 1174, 1178 (10th Cir. 2003). II. Analysis a. Fed. R. Civ. P. 12(b)(1) Under Fed. R. Civ. P. 12(b)(1) a party may assert a defense to a complaint for lack of subject-matter jurisdiction. There are two types of Rule 12(b)(1) motions, (1) those which attack the complaint on its face, and (2) those which attack the existence of subject matter jurisdiction in fact, quite apart from any pleading. See *Holt v. United States*, 46 F.3d 1000, 1002-03 (10th Cir. 1995). When there is an attack of the complaint on its face, a district court's review is similar to a Rule 12(b)(6) motion in that "a district court must accept the allegations in the complaint as true." *Id.* at 1002. However, for a Rule 12(b)(1) motion attacking the facts upon which subject matter jurisdiction exists, "a district court may not presume the truthfulness of the complaint's factual allegations." *Id.* at 1003. Accordingly, unlike a Rule 12(b)(6) motion, consideration of a Rule 12(b)(1) jurisdiction-type motion need not be limited since "a court has wide discretion to allow affidavits, other documents, and a limited evidentiary hearing to resolve disputed jurisdictional facts." *Id.* Under this authority, the Court looks at the Pleadings presented along with all attached exhibits. As Defendants correctly point out, it is a "jurisdictional requisite for a § 1983 action" that the actor was acting "under color of state law."¹ *Polk County v. Dodson*, 454 U.S. 312, 315 (1981). "The traditional definition of acting under color of state law requires that the defendant in a § 1983 action have exercised power 'possessed by virtue of state law and made possible only because the defendant is clothed with the authority of state law.'" *David v. City & Cnty of Denver*, 101 F.3d 1344, 1353 (10th Cir. 1997) (quoting *West v. Atkins*, 487 U.S. 42, 49 (1998)). Thus, the intent 1 "The two elements of a Section 1983 claim are (1) deprivation of a federally protected right by (2) an actor acting under color of state law." *Schaffer v. Salt Lake City Corp.*, 814 F.3d 1151, 1155 (10th Cir. 2016) (citation omitted). behind § 1983 is to "provide compensatory relief to those deprived of their federal rights by state actors." *Felder v. Casey*, 487 U.S. 131, 141 (1988). Native American tribes are "'self-governing sovereign political communities,'" *United States v. Hopson*, 150 F.4th 1290, 1299 (10th Cir. 2025) (quoting *United States v. Wheeler*, 435 U.S. 313, 322-23 (1978)), and it has long been held that "[s]tate courts generally have no jurisdiction to try Indians for conduct committed in 'Indian country.'" *McGirt v. Oklahoma*, 591 U.S. 894, 898 (2020) (quoting *Negonsott v. Samuels*, 507 U.S. 99, 102-103 (1993)). Therefore, state or county officers generally do not have authority derived from the state to enforce state laws over Indians within Indian country. See *Ross v. Neff*, 905 F.2d 1349, 1353 (10th Cir. 1990) ("The Supreme Court has expressly stated that state criminal jurisdiction in Indian country is limited to crimes committed by non-Indians against non- Indians...and victimless crimes by non-Indians"). Accordingly, for state or county officers to effectuate an arrest of an Indian in Indian country, they must do so under tribal authority. (Docket No. 11 at 13). Here, Defendants assert that Glasco was acting in his capacity as a cross-deputized Choctaw Nation Police Officer when he executed the search warrant for Plaintiff's residence.² *Id.* at 15. As such, Defendants further assert this Court lacks subject-matter jurisdiction to hear Plaintiff's § 1983 action since the officers were not acting under color of state law, but rather under the authority of the Choctaw Nation. *Id.* at 16. As stated above, "the

purpose of § 1983 is to ‘provide compensatory relief to those deprived of their federal rights by state actors,’” *Barrick v. Kasbaum*, No. CIV-23-129-JFH-GLJ, 2025 WL 2993764, at *3 (E.D. Okla. July 9, 2025) (quoting *Felder*, 487 U.S. at 141)). Thus, “[a] § 1983 action is unavailable for persons alleging deprivation of constitutional rights under color of tribal law.” *Burrell v. Armijo*, 456 F.3d 1159, 1174 (10th Cir. 2006) (quotation omitted). Because Glasco was acting under tribal authority, and not under color of state law, this Court lacks subject matter jurisdiction over Plaintiff’s Complaint and Defendants’ Motion to Dismiss is GRANTED.³ III. Conclusion For the reasons set forth herein, the Court concludes that the search, seizure, and subsequent arrest of Plaintiff were carried out pursuant to tribal authority under a Choctaw Nation warrant, and not under color of state law as required to maintain a claim under 42 U.S.C. § 1983. In the absence of this essential jurisdictional predicate, the Court lacks subject matter jurisdiction over Plaintiff’s claims. Additionally, Plaintiff’s failure to respond to Defendants’ Motion to Dismiss permits the Court to deem the motion confessed under the applicable local rules. Therefore, Defendants’ Motion to Dismiss is hereby GRANTED in its entirety and Plaintiff’s claims are dismissed without prejudice. DATED this 16th day of April, 2026. _____ D. Edward Snow United States Magistrate Judge 3 Defendants also argue Plaintiff’s Complaint fails to allege an underlying constitutional violation and fails to allege sufficient facts to state a plausible municipal liability claim against Defendants. The Court need not analyze these arguments after a finding that it lacks subject-matter jurisdiction to hear this Complaint.