No. 19-4093

IN THE
UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Richard Douglas Hackford,

Plaintiff-Appellant,

v.

The State of Utah, et al.,

Defendants-Appellees.

On appeal from the United States District Court, District of Utah
Honorable Clark Waddoups
No. 2:18-CV-631

Response Brief of State Appellees

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Oral Argument Not Requested

Table of Contents

Table of Authorities

Cases

Constitutions and Statutes

Regulations

Rules

Statement of Prior Appeals

Mr. Hackford has tried before to challenge state court criminal jurisdiction over his traffic violations. He previously appealed from a district court ruling holding that he was subject to state criminal jurisdiction because the site of the challenged violations was not in Indian country and "Mr. Hackford is not an Indian within the meaning of the relevant federal statutes." *Hackford v. Utah,* 845 F.3d 1325, 1326 (10th Cir. 2017) (describing the district court's holding). This Court affirmed based on the location of the traffic offenses but did "not reach the issue of Mr. Hackford's Indian status." *Id.*

Statement of Jurisdiction

Mr. Hackford's Complaint requested injunctive and declaratory relief under 28 U.S.C. §§ 2201, 2202 prohibiting his still-pending prosecution in Utah state court for a speeding ticket. Supp. App. 187-200. The district court had jurisdiction under 28 U.S.C. § 1331.

The district court dismissed Mr. Hackford's Complaint and entered a final judgment disposing of all parties' claims on June 13, 2019. App. 11-16. Mr. Hackford timely appealed on July 7, 2019. App. 10 (Dkt. No. 37). This Court has appellate jurisdiction under 28 U.S.C. § 1291.

Introduction

This appeal stems from a traffic violation. Mr. Hackford filed a federal suit arguing that he cannot be prosecuted for his speeding ticket in state court because he is an Indian and the violation occurred in Indian country. The district court rightfully dismissed the Complaint for failure to state a claim. Mr. Hackford admits he is a "mixed-blood" Ute under the federal Ute Partition Act. And that statute expressly subjects "mixed-blood" Utes to state jurisdiction.

Nothing he argues on appeal undermines the district court's conclusion. This Court should affirm.

Issue Presented

Whether the district court properly concluded that Mr. Hackford can be prosecuted for a traffic violation in Utah state courts based on his status as a "mixed-blood" Ute under the Ute Partition Act?

Preservation: The parties raised this issue below and the district court addressed it. App. 11-15; Supp. App. 216-87.

Statement of the Case and Facts[1]

Mr. Hackford got a speeding ticket driving in Ballard, Uintah County, Utah. Supp. App. 189. The County then began prosecuting the infraction in the county justice court. Supp. App. 189; *see generally State v. Hackford*, No. 175800035 (Eighth District Court, Uintah County, Utah).[2] Mr. Hackford challenged his prosecution on jurisdictional grounds. He argued the speeding violation occurred within Indian country and that he's an Indian under federal law, so state courts lack jurisdiction to prosecute him. *See, e.g.,* Mot. to Dismiss and Supporting Mem. (from Uintah County Justice Court) (Dkt. No. 18). The County and Mr. Hackford soon stipulated to the first part of his argument—the violation took place in Indian country. Stipulation of

[1] On appeal from a motion to dismiss, the Court accepts as true all sufficiently pleaded fact allegations in the complaint. *The Estate of Lockett by and through Lockett v. Fallin*, 841 F.3d 1098, 1104 n.2 (10th Cir. 2016). But this standard does not require the Court to accept "hyperbole or legal conclusions as true." *Id.*

[2] Mr. Hackford's Complaint does not discuss his state court prosecution in detail but the Complaint does refer to it and requests that it be enjoined. Supp. App. 189, 200. State Appellees therefore discuss some of the state court proceedings to provide context. Hereafter, state court pleadings will be cited to using the document's name and state court docket number.

Fact (Dkt. No. 16); Supp. App. 190.[3] But the justice court rejected Mr. Hackford's assertion that he is an Indian for federal jurisdictional purposes. Ruling (Dkt. No. 21). He then pleaded no contest and appealed to state district court. *See* Minutes[,] Sentence, Judgment, Commitment[,] Change of Plea, (Dkt. No. 27); Notice of Appeal (Dkt. No. 28).

With the matter still pending in state district court, Mr. Hackford filed a Complaint in federal district court against Uintah County and two County attorneys ("County Appellees") and the State of the Utah, its Governor, and Attorney General ("State Appellees"). Supp. App. 187-200. He sought a declaratory judgment that he is "an Indian for purpose of federal jurisdiction" and an injunction barring his state court prosecution for speeding. Supp. App. 200.[4]

But Mr. Hackford's Complaint does not assert he is a member of any federally recognized Indian tribe.[5] Rather, the Complaint admits

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[3] The State did not stipulate, and does not necessarily agree, that Ballard, Utah—the site of the speeding violation—is Indian country. Nonetheless, the State Appellees will assume the stipulation was made for purposes of the state court prosecution and the issues in this appeal.

[4] The state district court stayed its proceeding pending resolution of Mr. Hackford's federal suit. Minutes, Telephonic Status Conf. (Dkt. No. 51).

[5] He does allege that he is a "Native American, descendant of the aboriginal Utah Indians also known as the 'Uinta Band.'" Supp. App.

the dispositive fact that he is "identified on the Federal Register as a 'Mixed-Blood' Ute Indian, Role Number 142"[6] under the Ute Partition Act of 1954, 68 Stat. 868-78 (1954) ("Act" or "UPA").[7] Supp. App. 190; *see also* Mixed-Blood Members and Full-Blood Members of the Ute Indian Tribe, Notice of Final Membership Rolls, 21 Fed. Reg. 2208-09 (Dep't of the Interior April 5, 1956). And the UPA declares that all federal laws "which affect Indians because of their status as Indians"

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190. But having Native American ancestry does not automatically constitute membership in a federally recognized tribe. And the "Uinta Band" is not federally recognized anyway. *See* Indian Entities Recognized by and Eligible to Receive Servs. From the U.S. Bureau of Indian Affairs, 84 Fed. Reg. 1200-05 (Dep't of the Interior Feb. 1, 2019); *see also Gardner v. Jewell*, 538 F. App'x 830, 831 (10th Cir. 2013) (recounting statement from the Uinta and Ouray Agency of the Bureau of Indian Affairs that the "'Uinta' Band is not a federally-recognized Indian tribe"); *State v. Reber*, 2007 UT 36, ¶ 25, 171 P.3d 406 (holding members of the Uintah Band "do not belong to a federally recognized tribe and are not Indians under federal law").

[6] State Appellees use the "mixed-blood" terminology because it remains the statutorily defined term and was used by the parties and district court below.

[7] The Ute Partition Act used to be part of the United States Code, 25 U.S.C. § 677 *et seq*. In 2017, the Act was omitted from the Code, *id.* (2017), but remains codified in the United States Statutes at Large, 68 Stat. 868-78 (1954). So the Act is still valid law. *See* 1 U.S.C. § 112 (stating the "United States Statutes at Large shall be legal evidence of laws . . . in all the courts of the United States [and] the several States"); *U.S. Nat'l Bank of Or. v. Ind. Ins. Agents of Am., Inc.*, 508 US. 439, 448 (1993) (explaining that laws omitted from the Code remain "on the books if the Statutes at Large so dictates").

no longer apply to "mixed-blood" Utes, and expressly provides that State laws "shall apply" to mixed-blood Utes "in the same manner as they apply to other citizens within their jurisdiction." 68 Stat. at 877.

Based, in relevant part, on Mr. Hackford's undisputed status as a "mixed-blood" Ute and the UPA's controlling provisions, the State and County Appellees separately moved to dismiss the Complaint under Rule 12(b)(6) for failure to state a claim upon which relief could be granted. Supp. App. 216-26, 254-60.

After full briefing and a hearing, the district court dismissed Mr. Hackford's Complaint. Supp. App. 311-15. The court relied on Mr. Hackford's status as a "mixed-blood" Ute and the UPA's "clear and express" language subjecting "mixed-blood" Utes to the "laws of the several States." Supp. App. 314 (internal quotation marks omitted). From that the court correctly concluded that "Mr. Hackford's claim that he is immune from state prosecution because he is an Indian is expressly precluded by the Ute Partition Act and is therefore meritless." Supp. App. 314. The court also noted that its holding was consistent with a prior federal court adjudication rejecting Mr. Hackford's same argument—he "'is not an Indian so as to be beyond the criminal jurisdiction of the State and/or [County].'" Supp. App. 14

(quoting *Hackford v. Utah*, No. 2:13-cv-276, 2015 WL 4717639, *2 (D. Utah Aug. 7, 2015)).

Because the Complaint lacked merit, the court determined that it could not grant either the declaratory or injunctive relief Mr. Hackford sought. App. 14-15. So the court dismissed the suit and Mr. Hackford appealed.

Summary of the Argument

The district court properly dismissed Mr. Hackford's Complaint for failure to state a claim upon which relief can be granted. Both his claims for declaratory and injunctive relief depend on his argument that he is an Indian for purposes of federal criminal jurisdiction and cannot be prosecuted in state court. The district court correctly rejected this argument because Mr. Hackford is a "mixed-blood" Ute under the Ute Partition Act and therefore subject to state court jurisdiction.

That Act expressly states that all federal laws "which affect Indians because of their status as Indians" no longer apply to mixed-blood Utes and provides that state laws "shall apply" to "mixed-blood" Utes "in the same manner as they apply to other citizens within their jurisdiction." This Court, along with federal district and state courts,

have all previously held that the Ute Partition Act grants Utah jurisdiction over "mixed-blood" Utes.

Mr. Hackford never directly confronts the Ute Partition Act's provisions or the case law disproving his arguments. He instead argues that he is an Indian for purposes of another federal statute, the Major Crimes Act, and therefore subject only to federal criminal jurisdiction. But his argument ignores that (1) the Major Crimes Act does not apply to speeding tickets and so does not apply here; (2) the Ute Partition Act's provision stating that laws affecting Indians because of their status as Indians—like the Major Crimes Act—no longer apply to "mixed-blood" Utes like Mr. Hackford, and (3) Supreme Court precedent stating the Major Crimes Act does not apply to Indians whose status as such has been terminated by Congress. His arguments about the multi-part test to determine Indian status under the Major Crimes Act are irrelevant. He has failed to carry his burden to show the district court erred.

Mr. Hackford alternatively argues that the Ute Partition Act violates the Equal Protection Clause. But he did not preserve this argument in the district court and cannot raise it now on appeal. And this Court has already rejected equal protection challenges to the Act.

Finally, the Court can affirm the district court for another reason. Mr. Hackford has not alleged any facts that plausibly state a claim against any of the State Appellees. The Governor and Attorney General had nothing to do with the speeding ticket or subsequent state court prosecution and the State of Utah is only nominally involved. The County is prosecuting Mr. Hackford and does so in the name of the State as a legal formality. The State has had nothing to do with the underlying proceedings.

Standard of Review

The Court reviews de novo a district court order dismissing a complaint under Rule 12(b)(6). *McDonald v. Wise*, 769 F.3d 1202, 1210 (10th Cir. 2014). The Court accepts as true all sufficiently pleaded fact allegations in the complaint, while ignoring hyperbole or legal conclusions. *Fallin*, 841 F.3d at 1104 n.2. The well-pleaded facts must state a claim that is plausible on its face, meaning the facts plausibly show the defendants are liable under applicable law. *McDonald*, 769 F.3d at 1210.

Argument

I. The district court correctly held that Mr. Hackford is subject to state jurisdiction under the Ute Partition Act.

The central jurisdictional issue on appeal—whether Mr. Hackford can be prosecuted in state court for a traffic violation—can be resolved based on one fact and one statute. It is undisputed that Mr. Hackford is a "mixed-blood" Ute under, and therefore subject to, the Ute Partition Act.[8]

This appeal turns on the Act's delineation of what happened upon termination of the "Federal trust relationship" with the "mixed-blood" Utes: (1) they "shall not be entitled to any of the services performed for Indians because of [their] status as an Indian"; (2) "[a]ll statutes of the United States which affect Indians because of their status as Indians shall no longer be applicable to such member over which supervision has been terminated [e.g., 'mixed-blood' Utes]"; and (3) "*the laws of the several States shall apply to ["mixed-blood" Utes] in the same manner as they apply to other citizens within their jurisdiction.*" 68 Stat. at 877 (emphasis added).

[8] The Act's overall history, purposes, and effects have been outlined elsewhere and need not be repeated here. *See, e.g., Affiliated Ute Citizens of Utah v. United States,* 406 U.S. 128, 133-39 (1971); *Hackford v. Babbitt,* 14 F.3d 1457, 1458-1464 (10th Cir. 1994); *United States v. Murdock*, 919 F. Supp. 1534, 1535-1537 (D. Utah 1996).

This language, the Supreme Court has explained, establishes "two principles in unmistakably clear language": (1) "the special federal services and statutory protections for Indians are no longer applicable to the" terminated tribe members, and (2) "state laws apply to the [terminated tribe] members in precisely the same fashion that they apply to others." *South Carolina v. Catawba Indian Tribe, Inc.*, 476 U.S. 498, 505–06 (1986) (interpreting a termination act relating to the Catawba Tribe). In other words, the various termination acts reveal congressional intent "to subject [terminated] Indians to the full sweep of state laws." *Bryan v. Itasca Cty., Minn.,* 426 U.S. 373, 389 (1976).

As the district court noted, the Ute Partition Act provisions were formally triggered in 1961 when the Secretary of the Interior officially "'declar[ed] that the Federal trust relationship to ["mixed-blood" Utes] is terminated.'" Supp. App. 313-14 (quoting Termination of Federal Supervision Over the Affairs of the Individual Mixed-Blood Members, 26 Fed. Reg. 8042 (Dep't of the Interior Aug. 25, 1961)).

Based on the Act's "unmistakably clear language," *Catawba Indian Tribe*, 476 U.S. at 505, this Court and other federal and state courts have recognized that Utah may exercise jurisdiction over "mixed-blood" Utes, including Mr. Hackford. *See, e.g., Gardner v. United States*, No. 93-4102, 1994 WL 170780, *3 (10th Cir. May 5,

1994) (unpublished) ("Where a termination act such as [the Ute Partition Act] ended the federal trust relationship with an Indian and exposed him to state law, he is subject to state criminal jurisdiction . . . ."); *Hackford*, 2015 WL 4717639 at *2 (holding that Mr. Hackford, as a "mixed-blood" Ute, is "not an Indian so as to be beyond the criminal jurisdiction of the State and/or [County]"); *State v. Reber*, 2007 UT 36, ¶¶ 23-27, 171 P.3d 406 (holding the State had jurisdiction over defendants, who could not claim Indian status through ancestors whose Indian status was terminated by Ute Partition Act); *State v. Gardner*, 827 P.2d 980, 981 (Utah Ct. App. 1992) ("By terminating federal control over 'mixed-blood' Utes, Congress expressly transferred jurisdiction over them to state courts."); *see also Gardner v. Wilkins*, 535 F. App'x 767, 767-68 (10th Cir. 2013) (unpublished) (affirming dismissal of claims where plaintiff asserting Indian status "had already litigated Utah's authority over him and lost").

Mr. Hackford doesn't directly address the UPA's termination and jurisdictional mandates, nor the cases applying them to allow state court jurisdiction over terminated "mixed-blood" Utes. Instead, he argues that he's an Indian for purposes of the federal Major Crimes Act so only federal courts have jurisdiction over his traffic violation. Aplt.

Br. at 11-23. That theory ignores the text of both the Major Crimes Act and the Ute Partition Act and contradicts Supreme Court precedent.

By its own terms the Major Crimes Act does not apply to Mr. Hackford's speeding ticket. The statute grants exclusive federal jurisdiction only over certain "enumerated crimes committed by Indians in Indian country." *Murphy v. Royal*, 875 F.3d 896, 915 (10th Cir. 2017). And none of the listed crimes involves simple traffic violations. 18 U.S.C. § 1153(a) (enumerating crimes as: "murder, manslaughter, kidnapping, maiming, a felony under chapter 109A, incest, a felony assault under section 113, an assault against an individual who has not attained the age of 16 years, felony child abuse or neglect, arson, burglary, robbery, and a felony under section 661 of this title"). That means the Major Crimes Act wouldn't provide for federal jurisdiction here even if Mr. Hackford were a member of a federally recognized tribe.

And, even if the Major Crimes Act applied to routine traffic violations, it still wouldn't apply to Mr. Hackford. As he argues in his brief, the statute applies to persons based, in large part, on their Indian status. *See, e.g.,* Aplt. Br. at 12-14, 15, 19-23. But the Ute Partition Act expressly states that "[a]ll statutes of the United States which affect Indians *because of their status as Indians* shall no longer be applicable"

to mixed-blood Utes. 68 Stat. at 877 (emphasis added). So the Major Crimes Act could not apply to Mr. Hackford even if he had committed one of the Act's enumerated crimes.

Indeed, the Supreme Court long ago recognized that "members of tribes whose official status has been terminated by congressional enactment are no longer subject, by virtue of their status, to federal criminal jurisdiction under the Major Crimes Act." *United States v. Antelope*, 430 U.S. 641, 646 n.7 (1977)[9] (citing *United States v. Heath*, 509 F.2d 16, 19 (9th Cir. 1974)).

The Ninth Circuit reached the same result using a slightly different but still relevant analysis. In *Heath*, the court analyzed whether the Major Crimes Act conferred federal jurisdiction over crimes committed by Indians whose tribal status had been terminated by the Klamath Termination Act, which contains virtually the same material language as the Ute Partition Act. *Heath,* 509 F.2d at 19. The Ninth Circuit noted that statutes like the Major Crimes Act "exemplify the 'special responsibility' that the Government has assumed with respect to Indians [and that] [t]he Klamath Termination Act . . . was

[9] Mr. Hackford cites this same footnote from *Antelope* for another proposition but never acknowledges the Court's statement rejecting his argument. Aplt. Br. at 18.

intended to end the special relationship that had historically existed between the Federal Government and the Klamath Tribe." *Id.* The court recognized that "[w]hile anthropologically a Klamath Indian even after the Termination Act obviously remains an Indian, his unique status vis-a-vis the Federal Government no longer exists." *Id.* Under the Termination Act, therefore, "Klamath Indians are subjected to state laws and are to be dealt with by the law no differently than any other citizen of a state." *Id.* So the Court concluded that the Major Crimes Act "cannot serve to confer Federal jurisdiction with respect to crimes committed by terminated Klamath Indians." *Id.*

Similarly, another federal district court rejected the same argument Mr. Hackford asserts here. *See St. Cloud v. United States*, 702 F. Supp. 1456 (D.S.D. 1988). The court found that the petitioner would normally qualify as an Indian subject to federal criminal jurisdiction under the Major Crimes Act. *Id.* at 1460-62, 1466. But the court still held that petitioner was subject to state criminal jurisdiction because a termination statute had ended the "federal trust relationship" with him and "exposed" him to "state law [like] any other state citizen." *Id.* at 1466.

Despite the foregoing statutory text and case law, Mr. Hackford argues he should still be considered an Indian under the Major Crimes

Act and therefore immune from state court jurisdiction. But none of the arguments meaningfully address, much less undermine, the dispositive point: Mr. Hackford is a "mixed-blood" Ute and controlling case law and a federal statute dictate that "the laws of the several States shall apply to ["mixed-blood" Utes] in the same manner as they apply to other citizens within their jurisdiction." 68 Stat. at 877.

The allegations about Mr. Hackford's heritage, tribal assets, or dealings and relationships on the reservation do not change the result in this case. Indeed, his entire legal argument misses the point—it doesn't matter whether he satisfies the multi-part test from *United States v. Prentiss* to determine Indian status under the inapplicable Major Crimes Act or similar statutes. Aplt. Br. at 11-23 (urging the Court to apply the test for Indian status outlined in *United States v. Prentiss* and similar cases). As this Court explained in an analogous case: "Litigation regarding [a "mixed-blood" Ute's] Indian status is a road well-traveled. He does not claim to be a member of a federally recognized tribe. Rather, he claims only to be a descendant of a former member, as are many other Americans. Despite his best efforts in federal, state, and tribal court, this heritage does not entitle him to Indian status whether or not he lives and works on the reservation." *Gardner*, 535 F. App'x at 767.

Mr. Hackford's arguments fail to show how the district court erred. Absent any plausible allegations or arguments showing he is an Indian for purposes of federal criminal jurisdiction, the district court properly dismissed Mr. Hackford's claims for declaratory and injunctive relief. The Court should affirm.

II. Mr. Hackford did not preserve his equal protection argument and this Court has already rejected it.

Mr. Hackford also briefly argues that the Ute Partition Act violates the Equal Protection Clause by treating "mixed bloods differently than the remaining tribe members." Aplt. Br. at 23. This claim fails for at least two reasons.

First, Mr. Hackford did not preserve the issue. His brief on appeal does not indicate he raised this argument below. 10th Cir. R. 28.1(A) (requiring parties to pinpoint where in the record they preserved each issue). Nor could it because he never presented an equal protection argument in either of his responses to the State and County Defendants' respective motions to dismiss or at the hearing on the motions. Supp. App. 227-44, 262-75, 289-310. And, consistent with Mr. Hackford's failure to raise the issue, the district court's order does not mention or address an equal protection argument. Supp. App. 311-15.

This failure to preserve the issue precludes Mr. Hackford from raising it on appeal absent plain error. *Campbell v. City of Spencer*, 777 F.3d 1073, 1080 (10th Cir. 2014) (stating "an appellant waives an argument if she fails to raise it in the district court and has failed to argue for plain error and its application on appeal"); *see also Allman v. Colvin*, 813 F.3d 1326, 1330 (10th Cir. 2016) ("If a claimant fails to present an issue to the district court, the issue is forfeited unless compelling reasons dictate that the forfeiture be excused."). He never acknowledges his failure to preserve, much less argues for plain error review. The Court need not consider the equal protection argument.

Second, even if properly preserved, the equal protection argument lacks merit. Mr. Hackford concedes that this Court has already upheld the Ute Partition Act against an equal protection challenge. Aplt. Br. at 24 (citing *United States v. Von Murdock*, 132 F.3d 534, 542 (10th Cir. 1997)). Yet he argues that *Von Murdock* failed to discuss any rational basis for treating "mixed bloods" differently under the Act and that there can be no rational basis since Congress stopped pursuing Indian termination policies. Aplt. Br. at 24-25. This ignores precedent.

Mr. Hackford's own discussion of and quotations from *Von Murdock* discuss the UPA's rational basis:

> The purpose of the [Act] was to end federal supervision over the Ute Tribe. In pursuit of that goal, Congress determined that not all Tribal members were similarly situated with respect to their ability to manage their own affairs. Accordingly, Congress divided the Tribe into two classes, one whose members Congress had reason to believe were approaching the point at which federal supervision over them could be ended, and one whose members were not. This classification was part of a statute in which Congress dealt with the Tribe as a Tribe. We conclude the Act does not constitute improper racial discrimination, and we reject Mr. Murdock's claims that the Act violates due process and equal protection under the Fifth Amendment.

Von Murdock, 132 F.3d at 541-42; *see also* Aplt. Br. at 24 (discussing *Von Murdock*).

Mr. Hackford's argument similarly ignores additional Tenth Circuit precedent (that *Von Murdock* quotes) holding that the UPA did not "arbitrarily and capriciously discriminate[] against the mixed-blood group." *Ute Indian Tribe of the Uintah & Ouray Reservation v. Probst,* 428 F.2d 491, 498 (10th Cir. 1970) (on denial of reh'g) (per curiam). *Probst* determined that "the classification into the two groups was supported by the Indians, was relevant to the purposes of the legislation, and had a reasonable basis." *Id.* So the Court found "no arbitrary or capricious discrimination which violates Fifth Amendment due process." *Id.*

Mr. Hackford offers no reasons to overturn two prior decisions from this Court holding that the UPA rationally distinguished between

"mixed-blood" Utes and remaining tribe members. Instead, he suggests the Act must now be irrational because Congress has not recently pursued termination policy. Aplt. Br. at 25. He offers no support for this theory of constitutional law that, if correct, would invalidate countless statutes every time Congress changed its approach in any given area.

III. The Complaint makes no specific allegations against the State Appellees.

Finally, the Court can affirm the dismissal of Mr. Hackford's Complaint against the State Appellees for an additional reason. He fails to make a single allegation that any State Appellee had anything to do with his speeding citation or his state court prosecution. The Complaint mentions the Governor and Attorney General only in the caption. Supp. App. 187. Mr. Hackford could not plausibly allege that these two state officials had anything to do with prosecuting the speeding ticket. Similarly, the Complaint lists the State of Utah in the caption, Supp. App. 187, but then alleges State involvement only in connection with the County—e.g., "Uintah County, a political subdivision of the State of Utah, is prosecuting Mr. Hackford." Supp. App. 189; *see also id.* 190 ("The State of Utah, through its political subdivision, Uintah County, stipulated that the alleged offense

occurred in Indian Country."). These allegations only emphasize that the State has no practical involvement in Mr. Hackford's prosecution. The County alone is pursuing the matter without any State involvement or direction. To be sure, the County acts in the name of the State—hence the *State v. Hackford* caption for the state court proceeding. But that's a legal formality, not an indication that the State is somehow pulling the County's strings in the prosecution. Utah Const. art. VIII, § 16 ("The Legislature shall provide for a system of public prosecutors who shall have primary responsibility for the prosecution of criminal actions brought in the name of the State of Utah . . . ."); Utah Code § 17-18a-202(1) (for counties outside a prosecution the county attorney is a "public prosecutor for the county"); *id.* § 17-18a-203(1) (for counties inside a prosecution district the district attorney is a "public prosecutor); *id.* § 17-18a-401(1) (a public prosecutor shall "conduct, on behalf of the state, all prosecutions for a public offense committed within a county or prosecution district"). And Mr. Hackford has not alleged anything to show the State is involved in any way in his prosecution that could or would render the State liable or subject to his requested relief. *See* Fed. R. Civ. P. 8(a)(2) (complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief").

For this additional reason, the Court should affirm the dismissal of the Complaint against the State Defendants.

Conclusion

For the foregoing reasons, the Court should affirm.

Oral Argument Statement

Oral argument is unnecessary to resolve this appeal. But should the Court deem oral argument useful, State Appellees will participate to address the Court's questions.

Respectfully submitted,

s/ Stanford Purser
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1. This brief complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B) because:

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s/ Stanford Purser

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Certificate of Service

I hereby certify that on 20 February 2020, a true, correct and complete copy of the foregoing Response Brief of State Appellees was filed with the Court and served on all counsel of record via the Court's ECF system.

s/ Stanford Purser