UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

CARLY GRAFF, et. al.,	)	
	)	
Plaintiffs,	)	
v.	)	
	)	**Case No. 4:17-CV-606-TCK-JFJ**
ABERDEEN ENTERPRIZES II, INC., et al.,	)	
	)	
Defendants.	)	

PLAINTIFFS' OPPOSITION TO MOTION TO DISMISS SECOND AMENDED COMPLAINT BY DEFENDANTS THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ROGERS; SCOTT WALTON (SHERIFF OF ROGERS COUNTY) (OFFICIAL CAPACITY); AND KIM HENRY (FORMER CLERK OF ROGERS COUNTY) (OFFICIAL CAPACITY)

BRIEF B

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Index of Plaintiffs' Opposition Briefs

For ease of reference, each of Plaintiffs' opposition briefs has been labeled by letter according to the motion to dismiss to which it is responsive, listed below.

Brief A: 51 County Sheriff Defendants, Individual Capacity (Doc. 239)

Brief B: Rogers County Defendants, Official Capacity (Doc. 226)

Brief C: Kim Henry, Former Court Clerk of Rogers County, Individual Capacity (Doc. 227)

Brief D: Scott Walton, Sheriff of Rogers County, Individual Capacity (Doc. 228)

Brief E: Aberdeen Enterprizes II, Inc. (Doc. 230)

Brief F: Jim and Rob Shofner (Doc. 231)

Brief G: Oklahoma Sheriffs' Association (Doc. 232)

Brief H: Defendant Judges (Doc. 233)

Brief I: 51 County Sheriff Defendants, Official Capacity (Doc. 234)

Brief J: Vic Regalado, Sheriff of Tulsa County, Individual Capacity (Doc. 235)

Brief K: Don Newberry, Court Clerk of Tulsa County, Individual Capacity (Doc. 236)

Brief L: Darlene Bailey, Cost Administrator of Tulsa County, Individual Capacity (Doc. 237)

Brief M: Tulsa County Defendants, Official Capacity (Doc. 238)

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INTRODUCTION

The Court should deny the motion to dismiss of Defendants the Board of County Commissioners of the County of Rogers (Rogers Board); Scott Walton, Sheriff of Rogers County in his official capacity (Rogers Sheriff); and Kim Henry, former Court Clerk of Rogers County in her official capacity (Rogers Clerk) (collectively, "Rogers County Defendants").[1] The Rogers County Defendants have participated in a wide-ranging scheme that has resulted in the extortion of money, issuance of invalid arrest warrants, and illegal arrest and detention of indigent court debtors, including Plaintiffs and putative class members, in violation of the Constitution of the United States and state law. In their brief, the Rogers County Defendants seek to avert responsibility for their participation in this scheme by invoking inapplicable doctrines that they claim bar review, mischaracterize the facts and the nature of Plaintiffs' claims, and attempt to shift wholesale responsibility for the unlawful incarceration of the poor to the courts. Their arguments are unavailing, and their motion should be denied.

STATEMENT OF THE CASE

Plaintiffs' claims against the Rogers County Defendants are: Count Two, for seeking, issuing, and executing arrest warrants for nonpayment without inquiry into ability to pay, in violation of the Fourteenth Amendment; Count Three, for seeking, issuing, and executing arrest warrants based on unsworn allegations of nonpayment with material omissions in violation of the Fourth Amendment; Count Four, for detaining persons arrested on debt-collection arrest warrants because of their inability to pay; Count Five, for executing arrest warrants and detaining persons in jail in violation of state-created liberty interests; and Count Seven, for subjecting individuals

[1] Motion to Dismiss Second Amended Complaint and Brief In Support of Defendants the Board of County Commissioners of the County of Rogers; Scott Walton (Sheriff of Rogers County) (Official Capcity); and Kim Henry (Former Court Clerk of Rogers County) (Official Capacity), Docket No. 226 (hereinafter Doc. 226).

to onerous enforcement methods in violation of the Fourteenth Amendment. These claims are well founded in the Second Amended Complaint.

The Rogers County Defendants, including the Rogers Sheriff and Rogers Clerk (and therefore, legally, the County itself) actively participate in an unlawful wide-ranging debt-collection scheme with the "unflagging aim . . . to squeeze as much money out of impoverished court debtors as possible." SAC ¶ 2.

In Rogers County, the practices that are intended to extract money from criminal court debtors begin shortly after sentencing, when the Rogers Clerk adds numerous statutory costs to the fines and fees assigned at sentencing. *Id.* ¶ 133. The Rogers Clerk then negotiates a payment plan with the debtor without making a meaningful inquiry into ability to pay. Minimum payments are regularly set at $75 per month. *Id.* ¶ 134. The Rogers Clerk seeks arrest warrants for debtors who fall behind on payments, or when the Rogers Clerk decides that a debtor has sought too many extensions of time to pay. *Id.* ¶ 136. She then "submits a boilerplate, bare-bones debt-collection arrest warrant application to a Rogers County Judge, who signs it as a matter of course." *Id.* ¶ 136. These warrants are sought and issued "in the face of evidence . . . that the debtor lacks the ability to pay." *Id.* ¶ 137. Once a warrant is issued, the Clerk makes the decision to transfer the case to Aberdeen Enterprizes, Inc. II ("Aberdeen"), which will then send "boilerplate requests to the Rogers Clerk when it seeks to recall or issue a debt-collection arrest warrant." *Id.* ¶ 138. The Rogers Clerk forwards Aberdeen requests to the Rogers County Judge, who then recalls and issues debt-collection arrest warrants at Aberdeen's direction. *Id.* ¶ 138.

The Rogers Sheriff regularly arrests individuals pursuant to these debt-collection arrest warrants, knowing that there has been no inquiry into ability to pay or application made on sworn assertions of fact sufficient to justify arrest. *Id.* ¶ 32. When a debtor is arrested on one of

these warrants, she is brought to the Rogers County Jail and detained by the Rogers Sheriff. *Id.* ¶ 139. The Rogers Sheriff detains debtors on demand that they pay the total amount of court debts owed.[2] *Id.* If they can afford to pay, they are released. If not, they stay in jail until a hearing occurs on the following Monday, Tuesday, Thursday, or Friday, meaning that a debtor might sit in jail for up three days (or more, if on a holiday weekend) before seeing a judge. *Id.* ¶ 140. After seeing a judge, the Rogers Sheriff keeps in prison those who cannot afford to pay $100 for an additional four days. *Id.*

Plaintiffs Carly Graff and Melanie Holmes both have debt-collection arrest warrants arising out of Rogers County. Ms. Graff is a 40-year-old resident of Rogers County, and the mother of two children whom she struggles to provide for. *Id.* ¶¶ 18, 155. She was unable to pay the court debt associated with a traffic ticket, and, without conducting an inquiry into ability to pay, the Rogers Clerk sought, and the Rogers County Judge issued, a debt-collection arrest warrant against her. *Id.* ¶¶ 18, 158. Ms. Graff is indigent and would be unable to pay the required money to get out of jail were she to be arrested. *Id.* ¶ 18. She lives in constant fear of arrest, afraid to leave her house, and is in imminent danger of arrest and imprisonment in Rogers County. *Id.* ¶ 160.

Ms. Holmes is 41 years old and lives in Oregon. *Id.* ¶¶ 200, 212. She has an active debt-collection arrest warrant in Rogers County. *Id.* ¶ 206. When her Rogers County debt-collection arrest warrant was issued, she was indigent, and no inquiry was conducted into her ability to pay. *Id.* She has children and other family who still live in Oklahoma, and she is afraid to visit them for fear that she will be arrested on her warrants. *Id.* ¶ 213.

LAW AND ARGUMENT

[2] The amount, if paid, does not function as a bail bond; it is simply applied as a payment on the debt. SAC ¶ 128.

The Rogers County Defendants raise a series of inapplicable defenses that fail to defeat Plaintiffs' claims. First, similar to a number of other defendants, they assert that this Court cannot hear Plaintiffs' claims because of the *Younger*, *Rooker-Feldman*, or *Heck* doctrines. Mot. to Dismiss Second Am. Compl. and Br. in Support of the Rogers County Defs. in Their Official Capacity ("Doc. 226") at 10–14, 16–18. These arguments fail for a number of reasons, most obviously because there are no ongoing state court proceedings, Plaintiffs do not challenge their convictions or sentences, and their claims, if successful, would not undermine their convictions or sentences.

Second, the Rogers County Defendants argue that Plaintiffs have not shown an underlying constitutional violation, or, if they have, that these defendants cannot be held responsible for those violations under *Monell v. Dep't of Social Servs. of City of New York*, 436 U.S. 658 (1978). Doc. 226 at 19–23. This argument fails as well, as the Rogers County Defendants are final county policymakers for the areas that fall within their authority, as detailed below.

Finally, these Defendants assert that Rogers County is not a proper defendant, Doc. 226 at 15–16, but that same claim has been examined and rejected by courts in this district following Tenth Circuit precedent. All of the Rogers County Defendants' arguments rely on mischaracterizations of the facts and/or the law, and the Court should deny their motion to dismiss.

I. Plaintiffs Have Stated a Constitutional Violation

As an initial matter, Plaintiffs have stated an underlying constitutional violation by the Rogers County Defendants. As documented in the Second Amended Complaint, the Rogers Clerk submits applications for nonpayment arrest warrants that omit the crucial information that

a debtor cannot afford to pay, transfers cases to Aberdeen, and seeks warrants at Aberdeen's request. SAC ¶¶ 136–37. The Rogers Sheriff executes these debt-collection arrest warrants and holds debtors in jail when they cannot afford to pay a predetermined dollar amount, while releasing those who pay. *Id.* ¶ 139. In their introductory paragraphs, these Defendants attempt to whitewash their serial warrant-seeking, arrest, and incarceration of indigent court debtors who lack the ability to pay by characterizing their "bench warrants" as merely a means to "compel the attendance of persons who have disobeyed an order of the court." Doc. 226 at 5. This is a cynical euphemism. The warrants sought and enforced by the Rogers County Defendants, both at their own discretion and at the behest of Aberdeen, whether they are labeled "bench warrants" or otherwise, do not function as summonses. They are arrest warrants. And when the Rogers Sheriff arrests a debtor based on one of these bench warrants, he keeps that debtor in jail, sometimes for days, if she cannot afford to pay the preset dollar amount. *Id.* ¶¶ 139–40. Even short jail stays can have devastating consequences for indigent arrestees, including loss of employment, removal from housing, and inability to arrange care for children. *Id.* ¶ 99.

Nor, as these Defendants mischaracterize, are these warrants mandated under state law. In fact, state law does not even *permit* the arrests for nonpayment that the Rogers County Sheriff routinely makes pursuant to these warrants. As Defendants note in their own brief, Rule 8.4 of the Oklahoma Court of Criminal Appeals requires that court debtors who have missed payments "must be given an opportunity to be heard" as to the reasons for nonpayment *prior* to arrest. Doc. 226 at 6. Only if the debtor "fails to provide a satisfactory explanation for failure to pay" can the debtor be lawfully incarcerated. *Id.* The Rogers County Defendants omit this crucial mandatory step, seeking and enforcing arrest warrants prior to any opportunity to be heard. *See* SAC ¶¶ 136–39. In other words, the Rogers County Defendants turn the Rule 8 process on its

head—they routinely arrest and imprison indigent debtors without any inquiry into ability to pay and before any court could possibly assess that ability.

The state law-mandated procedure, which tracks the constitutional requirements of *Bearden v. Georgia*, 461 U.S. 660 (1983), belies the Rogers County Defendants' assertion that indigency should be raised only after the debtor's arrest and incarceration pursuant to a bench warrant, in the form of an "affirmative defense." *See* Doc. 226 at 5–6. The state court cases cited by the Rogers County Defendants do not support this end-run around Rule 8.4. *Tilden v. State*, 306 P.3d 554, 556 (Okla. Crim. App. 2013), and *McCaskey v. State*, 781 P.2d 836, 837 (Okla. Crim. App. 1989), simply hold that at a hearing regarding probation revocation for nonpayment of fines, a debtor who claims inability to pay at a hearing must present evidence of the same, not that she may be arrested and jailed before any hearing occurs. On the contrary, as these Defendants acknowledge in a footnote, if a person cannot pay because she lacks the means to do so, she is to be placed in "the same position as any other judgment debtor" and "is not [to be] thrown into prison or otherwise punished." Doc. 226 at 7 n.5 (quoting *State v. Ballard*, 868 P.2d 738, 741 (Okla. Crim. App. 1994)). Defendants' attempts to use state law as a smokescreen to justify their unconstitutional scheme rely on wholesale mischaracterization, as state law equally forbids the arrest and incarceration of indigent debtors prior to a hearing on ability to pay.

The Rogers County Defendants also argue that there is no underlying violation because neither of the named Plaintiffs who have active debt-collection arrest warrants in Rogers County have actually been arrested. *See* Doc. 226 at 20. But the mere existence of the unconstitutionally-sought and -issued warrants is currently injuring Plaintiffs. Ms. Holmes is afraid to return to Oklahoma to visit her children and family members, and Ms. Graff is

prevented from living a normal life, only leaving her home to take her children to the bus stop. SAC ¶¶ 160, 213. They are suffering because of Defendants' violations of their constitutional rights, and this Court may redress their claims.

Even if Plaintiffs were not injured by the warrants themselves, to the extent Defendants' argument is that the constitutional violation of arrest has yet to occur, their argument is wrongly characterized as one of failure to allege a "final policy or practice," and more properly sounds in the doctrine of ripeness. A claim is not ripe for adjudication if it rests upon "contingent future events that may not occur as anticipated, or indeed may not occur at all." *Thomas v. Union Carbide Agric. Prods. Co.*, 473 U.S. 568, 581 (1985) (quoting 13A Charles Alan Wright et al., Federal Practice and Procedure § 3532 (1984)). But there is nothing speculative about what occurs in Rogers County when a debtor has a debt-collection arrest warrant: the Rogers Sheriff executes the warrant by arresting the debtor, detaining her on demand of payment. SAC ¶ 139. Moreover, ripeness requires consideration of "the hardship to the parties of withholding court consideration." *Abbott Labs. v. Gardner*, 387 U.S. 136, 149 (1967). In this case, withholding court consideration imposes considerable hardship on Ms. Graff and Ms. Holmes, who live in constant fear of arrest, while a swift ruling would impose no hardship on the Defendants, who do not deny that they intend to arrest and detain Ms. Graff and Ms. Holmes on their warrants. The constitutional violations have occurred, further hardship is imminent, and these claims are ripe for adjudication.

II. Plaintiffs' Claims Are Not Barred By *Younger*

Contrary to Defendants' assertions, *Younger v. Harris*, 401 U.S. 37 (1971), does not prevent this Court from ruling on Plaintiffs' claims. The vast majority of the Rogers County Defendants' argument under *Younger* duplicate the arguments made by their codefendants. For

the sake of efficiency, Plaintiffs do not repeat the reasons why the Rogers County Defendants' argument fails here and instead refer the Court to their brief in opposition to the 51 County Sheriffs' Official Capacity Motion to Dismiss. See Br. I, Section V.B, pp. 28-34.

In addition to the arguments made by their codefendants, the Rogers County Defendants invoke *O'Shea v. Littleton*, 414 U.S. 488 (1974). Doc. 226 at 12 n.9. There, abstention was proper because of wide-ranging, unclear, and completely "unworkable" requests that there be a federal inquiry into every future state criminal prosecution to see if there was racial discrimination at every level. *O'Shea*, 414 U.S. at 500–02. Such an injunction would have required a federal takeover of the state criminal justice system. *Id*. at 500 (noting that *Younger* cautioned against entering injunctions which "would contemplate interruption of state proceedings to adjudicate assertions of noncompliance"). This case involves nothing even vaguely comparable. It is about whether these Defendants can employ certain methods of post-judgment debt-collection, and the type of "'nondiscretionary procedural safeguard[s]'" that Plaintiffs contend are necessary would not, even if imposed through an injunction, "require federal intrusion into pre-trial decisions on a case-by-case basis." *ODonnell v. Harris County*, 892 F.3d 147, 156 (5th Cir. 2018) (alteration in original) (quoting *Tarter v. Hury*, 646 F.3d 1010, 1013 (5th Cir. Unit A June 1981)) (rejecting argument based on *O'Shea* in suit based on failure of judges to make inquiries into ability to pay). No ruling on any of these questions would require future federal involvement in any ongoing state prosecution or revocation proceeding or the kind of future case-by-case analysis of constitutional violations at issue in *O'Shea*.

The Rogers County Defendants also suggest that it is the responsibility of Plaintiffs and their counsel to "request[] a Rule 8 hearing," and that not having done so, this Court must abstain from hearing Plaintiffs' claims. Doc. 226 at 11. This is a misunderstanding of *Younger*. The

required deference is to *ongoing* state court proceedings, and there is no requirement to initiate new state court proceedings instead of filing suit in federal court. "[I]f *Younger* applied to any state claim that could be filed, the rule that § 1983 has no exhaustion requirement would be effectively overturned." *ODonnell v. Harris County*, 227 F. Supp. 3d 706, 735 (S.D. Tex. 2016), *aff'd in relevant part and reversed in part*, 892 F.3d 147 (5th Cir. 2018); *see also Fernandez v. Trias Monge*, 586 F.2d 848, 852–53 (1st Cir. 1978) (*Younger* is limited to remedies "that are provided in the ordinary course of the pending state proceedings.").

Moreover, any relief that could potentially occur at a hearing in front of a state court judge would come too late, as it would occur only after the issuance of a debt-collection arrest warrant, and, potentially, the arrest and incarceration of the debtor. As stated in the Second Amended Complaint, debt-collection arrest warrants are issued in Rogers County after either three months of nonpayment or too many requests for extension of time—there is "no notice or opportunity to be heard . . . provided to the debtor" prior to issuing an arrest warrant. SAC ¶ 136. This case, therefore, falls within the exception articulated in *Gerstein v. Pugh*, 420 U.S. 103 (1975), in which the Supreme Court explained that *Younger* is inapplicable when the constitutional violation occurs prior to a criminal defendant's opportunity to be heard in court. *Id.* at 107 n. 9.

III. Plaintiffs' Claims Are Not Barred by the *Heck v. Humphrey* or *Rooker-Feldman* Doctrines Because Plaintiffs Do Not Challenge their State Court Convictions or Sentences

The Rogers County Defendants present two separate arguments that rely on a mischaracterization of Plaintiffs' claims as a challenge to their state court convictions and sentences. The Rogers County Defendants claim that the *Rooker-Feldman* doctrine requires the Court to abstain from granting relief from their sentences, Doc. 226 at 13–14, and that the *Heck*

doctrine bars relief because Plaintiffs' § 1983 claims "would necessarily undermine a basic characteristic . . . of their plea agreements and criminal sentences," Doc. 226 at 17. These arguments are mistaken. Again, these arguments are highly duplicative of the arguments made by their co-defendants. Therefore, for purposes of efficiency, Plaintiffs incorporate by reference the arguments made in their brief in opposition to the 51 County Sheriffs' Official Capacity Motion to Dismiss. *See* Br. I, Section V.A, pp. 23-28.

Additionally, the Rogers County Defendants imply that *Heck* requires Plaintiffs to exhaust potential state court remedies prior to filing in federal court. *See* Doc. 226 at 17–18 ("Plaintiffs cannot pursue a federal court lawsuit . . . without a showing that they have taken advantage of available state court procedures and that their sentences have been reversed on direct appeal." (emphases omitted)). On the contrary, Plaintiffs are not required by *Heck* to exhaust all potential state court remedies prior to filing in federal court. *Heck* is much more straightforward than the Rogers County Defendants suggest—it "den[ies] the existence of a cause of action" where the suit would invalidate the conviction or sentence. *Heck v. Humphrey*, 512 U.S. 477, 489 (1994). It does not create a general state-court exhaustion requirement, and the Rogers County Defendants have cited nothing to the contrary. *See id.* at 487 ("[I]f the district court determines that the plaintiff's action, even if successful, will *not* demonstrate the invalidity of any outstanding criminal judgment against the plaintiff, the action should be allowed to proceed. . . ." (emphasis in original)).

The Rogers County Defendants confusingly attempt to bolster their argument by asserting that, because Plaintiffs entered plea agreements that included the underlying fines, they are in violation of their plea agreements by nonpayment, and thus a ruling in their favor would undermine those agreements (and, ergo, their convictions). *See* Doc. 226 at 18. In support of

this argument, the Rogers County Defendants offer irrelevant case law applying contract doctrines to plea agreements. *See, e.g.*, *United States v. Frownfelter*, 626 F.3d 549 (10th Cir. 2010). This argument fails, however, for the simple reason that no Plaintiff challenges her conviction or sentence. Moreover, a plea agreement could not possibly bar a person from filing a lawsuit about any unconstitutional treatment arising as a result of their sentences, even years after the imposition of their sentences. Taken to its logical conclusion, this position would mean that criminal defendants who pleads guilty would lose all ability to challenge unconstitutional conduct arising from effects of their sentence because they voluntarily entered into the agreements. For example, a prisoner could not challenge the conditions of her confinement. This result is not supported by law, and should be rejected.

Just as with *Heck*, the Rogers County Defendants also attempt to write an exhaustion requirement into the *Rooker-Feldman* doctrine by arguing that Plaintiffs are precluded from asserting their claims in this action because they "have an avenue of recourse available to them"—namely, going to state court and requesting a "Rule 8" hearing. Doc. 226 at 14. This argument fails because "*Rooker-Feldman* does not impose a duty to exhaust judicial and administrative remedies before pursuing a federal civil rights suit." *Loubser v. Thacker*, 440 F.3d 439, 442 (7th Cir. 2006). Thus, even if Plaintiffs could raise their constitutional claims in state court (and it is unclear that judges would hear constitutional claims in the context of a "Rule 8" hearing), they were not obligated to do so.

IV. The Rogers Sheriff and Rogers Clerk Are Final Policymakers Under *Monell*

In response to Plaintiffs' allegations under § 1983, the Rogers County Defendants claim that they cannot be held liable for seeking and executing unlawful warrants, or for jailing indigent debtors for nonpayment of debt, because "Sheriff Walton and Court Clerk Henry do not

set final, official policy with respect to whether an arrest or bench warrant will issue for failure to pay fines, costs or fees." Doc. 226 at 22. In essence, these defendants seek to shift wholesale responsibility for every policy affecting unlawful debt-collection in Rogers County to the courts. These arguments are substantially similar to those set forth by the Tulsa County Defendants, and are unavailing for the same reasons set forth in Plaintiffs' opposition to the Tulsa County Defendants' Motion to Dismiss, which Plaintiffs incorporate here to avoid duplicative briefing. *See* Br. M, Section I, pp. 4-15.

V. Rogers County is a Proper Party Defendant

Rogers County, like Tulsa County (*see* Doc. 238 at 10–11), argues that it cannot be sued by Plaintiffs because it is not a "proper party." Doc. 226 at 15–16. It argues that the Sheriff and Court Clerk are alone responsible for the alleged activities imputed to the County, and because they are already named as defendants, the claim against the County itself is "unnecessary and superfluous." Doc. 226 at 16. But this same argument was exhaustively examined and rejected in a recent case in this district heard by Judge Dowdell, who observed that Tenth Circuit and Supreme Court precedent "plainly establish that a policy of a county sheriff in his final policymaking capacity *is a county policy*, such that a county may be sued under § 1983 so long as such policy was the moving force behind a constitutional violation." *duBois v. Bd. of Cty. Comm'rs*, No. 12-CV-677-JED-PJC, 2014 U.S. Dist. LEXIS 137119, at *20 (N.D. Okla. Sept. 29, 2014) (emphasis in original). The court further concluded that "[b]ecause a sheriff's official policy is county policy and a 'county' is sued in the name of its board of county commissioners, *see* Okla. Stat. tit. 19, § 4, . . . the [Board] is a proper party defendant in this case." *Id.* at *21–22.

Plaintiffs have clearly challenged practices and policies of the Rogers Sheriff and Rogers Clerk. *See, e.g.,* SAC ¶¶ 32, 37. And these policies and practices, which are indeed the "moving force" behind the violations alleged, *see* Section I, *supra*, are imputed to the respective counties. Just as in *duBois*, despite "the existence of case law to the contrary . . . , finding [the Board] to be a proper defendant to this proceeding appears . . . to be more consistent with [Tenth Circuit Precedent] and the Oklahoma statutory scheme, which requires that a county be sued in the name of its board of county commissioners." *duBois*, 2014 U.S. Dist. LEXIS 137119, at *24–25. Since *duBois*, Oklahoma district courts have universally adopted its reasoning, and declined to adopt the ruling of the sole district court case cited by defendants. *Compare Dixon v. Bd. of Cty. Comm'rs*, No. CIV-15-196-R, 2016 U.S. Dist. LEXIS 127172, at *10 (W.D. Okla. Sep. 19, 2016) (citing *duBois* and finding Board of County Commissioners to be a properly named defendant for actions of county policymaker); *Flowers v. Garvin Cty. Bd. of Cty. Comm'rs*, No. CIV-15-396-C, 2016 U.S. Dist. LEXIS 71246, at *16 (W.D. Okla. May 3, 2016) (same); *Chichakli v. Samuels*, No. CIV-15-687-D, 2016 U.S. Dist. LEXIS 62936, at *10–11 (W.D. Okla. Mar. 10, 2016) (same); *Brashear v. Tulsa Cty. Bd. of Cty. Comm'rs*, No. 15-CV-473-GKF-PJC, 2015 U.S. Dist. LEXIS 164851, at *4 n.1 (N.D. Okla. Dec. 9, 2015) (same); *with Goss v. Bd. of Cty. Comm'rs.,* No. 13-CV-0374-CVE-TLW, 2014 U.S. Dist. LEXIS 141763, at *17 (N.D. Okla. Oct. 6, 2014) (finding Board not proper party because it is statutorily distinct from sheriff). The argument by Rogers County here should be rejected on the same grounds set forth in *duBois* and followed by other district courts in this state.

CONCLUSION

For the foregoing reasons, the Rogers County Defendants' motion to dismiss should be denied.

Dated: November 30, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of November, 2018, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to all ECF registrants who have appeared in this case.

/s/ Seth Wayne