Gilliland v. Barteaux, 2023 WL 3066122 (N.D. Okla., April 24, 2023).

- **Holding**: Federal district court lacked jurisdiction to adjudicate habeas corpus petition when petitioner was not in the custody of the tribal court due to her having relocated to Poland.
- **Summary**: Before the Cherokee Nation District Court, petitioner Gillibrand was charged with multiple counts of embezzlement. Gillibrand was arraigned, entered a plea of not guilty, and was released on her own recognizance with no bond required. Before trial, Gillibrand moved to Poland. Gilliland's personal recognizance bond was revoked, and the court set a new cash bond of $10,000, and issued a bench warrant. Gillibrand, thorough counsel, petitioned for a writ of habeas corpus, arguing that the tribal court's orders violated due process as required by the Indian Civil Rights Act because the $10,000 cash bond was excessive and punitive and because the tribal court had no authority to issue an arrest warrant for service outside the Cherokee Nation.

  The federal district court denied the petition on the basis of 25 U.S.C.A. § 1303, which states that federal courts do not have jurisdiction to adjudicate a habeas petition unless the petitioner is "in custody" "by order of an Indian tribe." While Tenth Circuit precedents had concluded that habeas petitioners were "in custody" when "tribal authorities charged, arraigned, and released [habeas petitioners] on their own recognizance pending trial, the court distinguished such cases as relying on the fact that such petitioners were subject to constraints on their liberty due to the risk of immediate arrest if they failed to appear, while here, the petitioner could make no such claim, since she was in Poland, and her arrest and prosecution was merely a "speculative possibility that depends entirely on a factor within her control, namely, whether she returns to the United States for trial."
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