

# United States Department of the Interior

## BUREAU OF INDIAN AFFAIRS

Cherokee Agency  
Cherokee, North Carolina 28719

IN REPLY REFER TO.

Michell Hicks, Principal Chief  
Eastern Band of Cherokee Indians  
P.O. Box 455  
88 Council House Loop Cherokee, NC 28719

Dear Chief Hicks:

Attached is signed Tribal Council Resolution No. **196** **Feb. 7, 2008** Should you have any questions regarding this matter please contact me at (828) 497-9131 extension 227.

Sincerely,

A handwritten signature in black ink, appearing to be "D. L. ...".

Superintendent

**PASSED**

Cherokee Council House  
Cherokee, Qualla Boundary (NC)

Date: FEB 07 2008

RESOLUTION NO. 196 (2008)

WHEREAS, the Eastern Band of Cherokee Indians has the sovereign authority to exclude persons from lands of the Eastern Band in order to protect the integrity, law and order of those lands and the welfare of the members of the Tribe; and

WHEREAS, the Tribal Council has codified its authority to exclude persons from the lands of the Eastern Band at Chapter 2 of the Cherokee Code; and

WHEREAS, MICHAEL DEREK BEARDEN is not a member of the Eastern Band of Cherokee Indians; and

WHEREAS, Tribal Council has good reason to believe that MICHAEL DEREK BEARDEN is a threat to the law and order on Tribal lands and a threat to the welfare of enrolled members by engaging in certain criminal conduct; and

WHEREAS, Tribal Council believes that the threat to this Tribe will diminish if MICHAEL DEREK BEARDEN is not allowed to remain on lands owned by or held in trust for the Eastern Band of Cherokee Indians; and

WHEREAS, on 01/06/08 a Writ of Emergency Temporary Exclusion was issued by the Tribal Court to MICHAEL DEREK BEARDEN; and

WHEREASE, MICHAEL DEREK BEARDEN has been provided sufficient notice of today's hearing to permanently exclude hem from all Tribal lands.

NOW THEREFORE, BE IT RESOLVED by the Tribal Council, in Council assembled, with a quorum present and with the number of votes required by Tribal law that MICHAEL DEREK BEARDEN is hereby permanently excluded from all Tribal lands and IS HEREBY NOTIFIED AND ORDERED TO VACATE ALL TRIBAL LANDS and to remove all his personal property from Tribal lands within 48 hours from the date this resolution is ratified. Any personal property remaining on Tribal lands after that period shall become the property of the Tribe.

BE IT FURTHER RESOLVED that if MICHAEL DEREK BEARDEN is found on Tribal lands at any time after the effective date of this resolution he shall be in violation of Tribal law and of a lawful order of Tribal Council and a law enforcement officer shall arrest him and take other appropriate legal action against him.

BE IT FURTHER RESOLVED that this exclusion prohibits MICHAEL DEREK BEARDEN from entering on or being present on Tribal lands for any purpose EXCEPT AS REQUIRED BY A SUBPOENA OR NOTICE OF SERVICE issued by the Cherokee Tribal Court or an officer of the Tribe with authority to issue subpoenas.

BE IT FINALLY RESOLVED that this resolution shall be effective upon ratification by the Principal Chief.

*Submitted by The Office of the Attorney General on behalf of those authorized under Chapter 2 of the Cherokee Code*

# EASTERN BAND OF CHEROKEE INDIANS



Writ Application No (if applicable)

CR 08-0015:0016  
and 0018

Tribal Council

EBCI  
CHEROKEE TRIBAL COURT  
CHEROKEE, NC

EASTERN BAND OF CHEROKEE INDIANS VERSUS

Name of Individual  
**Michael Derek Bearden**

Non-Member  
 Yes

2008 JAN -7 AM 8:12  
**WRIT OF EMERGENCY  
TEMPORARY EXCLUSION**

Race  
**White**

Sex  
**Male**

DOB  
**05/13/1960**

**FILED**  
**FINDINGS**

Location of Incident  
**Harrah's Casino & Best Western Motel**

Date of Incident  
**01/06/2008**

Time of Incident  
**0052**

CIPD Case Number  
**0801060052**

I, the undersigned have reviewed the Application for Writ of Emergency Temporary Exclusion and have determined that probable cause exists that on or about the date of offense shown and in the location named above, the non-member individual named above did commit a Drug Offense, as defined in C.C. §2-9, and thereby constitutes a treat to the integrity and law and order on Tribal lands of the Eastern Band of Cherokee Indians and territory or welfare of its members.

Drug Statute	Offense
14-95.5 ( a )	Meth-Amphetamine 4 grams
14-95.5 ( a )	Simple Possession of Marijuana
14-95.11 ( c )	Paraphernalia
14-95.22	Prior Convictions

## WRIT

### TO THE PERSON NAMED ABOVE

Under the authority of the Laws of the Eastern Band of Cherokee Indians, you are ordered to leave the territorial jurisdiction of the Eastern Band of Cherokee Indians and not to return until permitted by the Tribal Council of the Eastern Band of Cherokee Indians. This application and Writ will be placed on the agenda of Tribal Council on the date and time showed below. You may appear at this hearing where Tribal Council will review all facts and determinations in this matter.

### TO ANY CHEROKEE OFFICER

Under the authority of the Laws of the Eastern Band of Cherokee Indians, you are hereby ordered to execute this Writ of Emergency Temporary Exclusion by serving a copy of this Writ and Application upon the person named above and transporting this Non-Member to any point outside the territorial jurisdiction of the Eastern Band of Cherokee Indians. This is in addition to any criminal charged filed against the person named above. If this person is found within the territorial jurisdiction of the Eastern Band of Cherokee Indians after the execution of this Writ, they are to be taken into custody and are to be charged in Federal and/or Tribal Court.

Date To Appear <b>2-7-08</b>	Time To Appear <b>8:00</b> <input checked="" type="checkbox"/> AM <input type="checkbox"/> PM	Date Of Order <b>1-6-08</b>
Place To Appear <b>Council House Cherokee, Qualla Boundary (NC)</b>	Signature <i>[Signature]</i>	

## RETURN OF SERVICE

I certify that was received and served on the defendant as follows:

Date Received <b>1/6/08</b>	Date of Return <b>1/6/08</b>	Officer Making Return <i>[Signature]</i>
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# EASTERN BAND OF CHEROKEE INDIANS

Tribal Council

EBCI  
CHEROKEE TRIBAL COURT



Date and Time of Application

CR 08-00510016; 0018

## EASTERN BAND OF CHEROKEE INDIANS VERSUS

Name of Individual

Michael Derek Bearden

Non-Member /

Yes  No

## 8:12 APPLICATION FOR WRIT OF TEMPORARY EMERGENCY EXCLUSION

Race

White

Sex

Male

DOB

05/13/1960

FILED

Location of Incident

Harrah's Casino & Best Western Motel

Date of Incident

01-06-08

Time of Incident

0052

CIPD Case Number

0801060052

I, the undersigned, upon information and belief, allege that on or about the date of offense shown and in the location named above, the non-member individual named above did commit a Drug Offense, as defined in C.C. §2-9, and thereby constitutes a treat to the integrity and law and order on Tribal lands of the Eastern Band of Cherokee Indians and territory or welfare of its members, by:

- [C.C. 14-95.5(a)] Possessing a controlled substance classified in schedule I, II, III, IV, and V, specifically Description of substance (Kind, Quantity)  
**Meth-Amphetamine 4 grams**
- [C.C. 14-95.5(b)] Possessing a controlled substance, specifically more than one-half ounce of marijuana or more than one-twentieth of an ounce of hashish (Aggravated Possession of Marijuana).
- [C.C. 14-95.5(c)] Possessing a controlled substance, specifically less than one-half ounce of marijuana or less than one-twentieth of an ounce of hashish (Simple Possession of Marijuana). **MUST HAVE AGGRAVATING FACTORS**
- [C.C. 14-95.6(b)]  Manufacturing  Selling or delivering  Possessing with intent to sell or deliver a controlled substance classified in schedule I, II, III, IV, and V, specifically Description of substance (Kind, Quantity)
- [C.C. 14-95.6(c)]  Manufacturing  Selling or delivering  Possessing with intent to sell or deliver a controlled substance classified in schedule VI.
- [C.C. 14-95.6(d)] Manufacturing Methamphetamine.
- [C.C. 14-95.7]  Manufacturing  Selling or delivering  Possessing with intent to sell or deliver a counterfeit controlled substance.
- [C.C. 14-95.8(a)] Possessing an immediate precursor chemical with intent to manufacture a controlled substance; or possess or distribute an immediate precursor chemical knowing or having a reasonable cause, to believe that the immediate precursor chemical will be used to manufacture a controlled substance.
- [C.C. 14-95.8(b)] Possessing an immediate precursor chemical with intent to manufacture methamphetamine; or possess or distribute an immediate precursor chemical knowing or having a reasonable cause, to believe that the immediate precursor chemical will be used to manufacture methamphetamine.
- [C.C. 14-95.8(d)] Possessing a seed or ripened ovule of gymnosperm or angiosperm which can be used to produce any controlled substance
- [C.C. 14-95.9]  Trafficking in Marijuana  Trafficking in Methaqualone  Trafficking in Cocaine  Trafficking in Methamphetamine/Amphetamine  Trafficking in Opiate/Heroin  Trafficking in Lysergic Acid Diethylamide  Trafficking in MDA/MDMA
- [C.C. 14-95.10] Transporting, carrying, or otherwise causing, assisting, or providing for the importation of controlled substance or immediate precursor chemical into the territory of the Eastern Band of Cherokee Indians
- [C.C. 14-95.11(c)] Using, possessing with intent to use drug paraphernalia **MUST HAVE AGGRAVATING FACTORS**
- [C.C. 14-95.11(d)] Delivering, possessing with intent to deliver, or manufacture with intent to deliver drug paraphernalia
- [C.C. 14-95.11(f)] Advertising drug paraphernalia **MUST HAVE AGGRAVATING FACTORS**

### AGGREGATING FACTORS

- [C.C. 14-95.22] Prior convictions
- [C.C. 14-95.23(a)] Sale or delivery of controlled substance to person under 16 years of age or a pregnant female
- [C.C. 14-95.23(b)] Delivery of drug paraphernalia to a person under 16 years of age
- [C.C. 14-95.23(c)] Purchase or receive controlled substance from minor 16 years of age or younger
- [C.C. 14-95.23(d)] Offense committed while pregnant
- [C.C. 14-95.23(e)] Sale or delivery on property used for a school, day care center, playground, or community building or within 300 feet of the boundary of real property used for a school, day care center, playground, or community building
- [C.C. 14-95.23(f)] Possess on property used for a school, day care center, playground, or community building or within 300 feet of the boundary of real property used for a school, day care center, playground, or community building
- [C.C. 14-95.23(g)] Sale or Delivery in the primary residence of a child 13 years of age or younger
- [C.C. 14-95.23(h)] Possession in the primary residence of a child 13 years of age or younger
- [C.C. 14-95.23(i)] Sale or Delivery in the sensory perception of a child 13 years of age or younger
- [C.C. 14-95.23(j)] Possession in the sensory perception of a child 13 years of age or younger
- [C.C. 14-95.23(k)] Possession or Sale or Delivery in the sensory perception or dwelling of a child between 13 and 16.
- [C.C. 14-95.24] Possession of gun at time of offense

I certify that I am a Law Enforcement Officer with the responsibility of enforcing Cherokee Law, I have read the above statement, and I verify that the facts set forth in this application are true and correct to the best of my knowledge.

Date  
01-06-2008

Name of Law Enforcement Officer  
Norman Reed Jr.

Signature of Law Enforcement Officer

*Norman Reed Jr.*

### Official's Certification

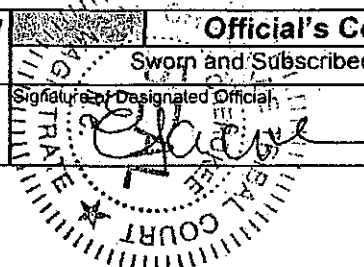
Sworn and Subscribed before me this day.

Signature of Designated Official

*[Signature]*

Date

1-6-08



EASTERN BAND OF CHEROKEE INDIANS



EBCI Tribal Council COURT



JAN -7 AM 8:12 IDENTIFYING INFORMATION ABOUT EXCLUDED INDIVIDUAL

Write Application No (if applicable) Date Issued (if applicable) Designated Official (if applicable)

INFORMATION ABOUT INDIVIDUAL

Name of Individual Michael Derek Bearden

Street Address of Individual (No P.O. Box) 18862 E. Highway 136

City Sugar Valley State GA Zip 30746-2011

Date of Birth 05-13-1960 Race: [X] White [ ] Black [ ] Asian/ Pacific Islander [ ] Other Sex: [X] Male [ ] Female

Height 5-09 Weight 150 Hair Color Brown Eye Color Hazel

Identifying Marks (List any marks, scars, tattoos)

Does the Individual have a driver's license or state-issued card from any state? [X] Yes [ ] No If yes, provide the state and number if possible: State GA Number: 007253215

Vehicle Description and License Plate Number:

Social Security Number of Individual 259-25-9347

Telephone Number of Individual 706-397-8158

Is there any reason that a law enforcement officer should consider the individual a potential threat (i.e., carries concealed weapons while drinking alcohol, has threatened an officer etc.)? [ ] Yes [X] No

If yes, specify the circumstances:

COUNCIL PROCEEDINGS

Table with 3 columns: Hearing Date, Result of Hearing, Signature. Multiple empty rows.

## Chapter 2 EXCLUSION POWERS OF TRIBE\*

\*Cross references: Civil procedure, ch. 1; exclusion or rejection of individuals for Tribal gaming, § 16-9.01 et seq.; enrollment, ch. 49; Tribal government, ch. 117.

Sec. 2-1. Power to exclude.

Sec. 2-2. Tribal Council proceedings.

Sec. 2-3. Notice and legal defense rights.

Sec. 2-4. Terms of exclusion.

Sec. 2-5. Votes required for exclusion.

Sec. 2-6. Enrolled members; permanent exclusion.

Sec. 2-7. Request for exclusion action.

Sec. 2-8. List of convictions for which exclusion is a punishment.

Sec. 2-9. Emergency temporary exclusion.

### **Sec. 2-1. Power to exclude.**

- (a) The Tribal Council shall have the power to exclude enrolled Tribal members for sexual offenses against minors and for convictions for trafficking in controlled substance under Chapter 14 of the Cherokee Code. Tribal Council shall also have the authority to exclude enrolled Tribal members for violations of state and federal law where such offenses would constitute trafficking in controlled substance under the Cherokee Code if committed within the territory of the Eastern Band of Cherokee Indians.
- (b) The Tribal Council shall have the power to exclude other persons from Cherokee trust lands when necessary to protect the integrity and law and order on Tribal lands and territory or the welfare of its members.
- (c) The Tribal Council shall have the power to exclude from or prohibit operation of a business on Cherokee trust lands or specific locations thereon, if the business threatens the health, safety or welfare of Tribal members or Tribal natural resources due to spills, accidents, illegal dumping, or other unauthorized releases of hazardous materials into the environment.

Notwithstanding any other provision of law, the Tribe reserves its sovereign immunity and shall not be liable for claims of loss, damage or injury resulting from exclusions.

(Ord. No. 92, 5-5-1994; Ord. No. 271, 7-24-1996; Ord. No. 630, 2-1-2007; Ord. No. 589, Art. III, 2-8-2007)

### **Sec. 2-2. Tribal Council proceedings.**

The Tribal Council shall exercise its power to exclude persons from Cherokee trust lands only in open session of the Council. Nothing in this section shall prohibit the issuance of Writs of Emergency Temporary Exclusion under 2-9 or the exclusion of persons under 2-3(f).

(Ord. No. 92, 5-5-1994; Ord. No. 589, Art. III, 2-8-2007)

### **Sec. 2-3. Notice and legal defense rights.**

- (a) The Tribal Council shall provide reasonable notice to all persons over whom it exercises the power of exclusion, together with hearing before the Tribal Council.
- (b) The Tribal Council shall provide not less than ten calendar days written notice to such persons prior to hearing. For good cause shown, the Council can waive the ten-day period and exclude immediately.
- (c) Such persons shall be provided with a written statement of the grounds for the proposed exclusion at the same time notice of the hearing is served upon them.
- (d) Such persons shall have the right to appear in person before the Tribal Council, to be represented by legal counsel before the Tribal Council, to require all testimony to be under oath at such hearing, to subpoena witnesses in their behalf for such hearing, to confront or question witnesses bringing exclusion actions against them to the Tribal Council or testifying against them in such hearing.
- (e) Notice of exclusion hearings shall specify the duration of exclusion proposed for each individual.
- (f) Any person convicted of trafficking in controlled substance under Chapter 14 of the Cherokee Code shall not be allowed to enter the territory of the Eastern Band of Cherokee Indians until a hearing on exclusion is held by the Tribal Council. Such hearing shall, if possible, be held prior to their release from custody.

(Ord. No. 92, 5-5-1994; Ord. No. 271, 7-24-1996; Ord. No. 589, Art. III, 2-8-2007)

#### **Sec. 2-4. Terms of exclusion.**

The Tribal Council may exclude persons from Cherokee trust lands for limited periods of time, indefinite periods of time or permanently.

(Ord. No. 92, 5-5-1994)

#### **Sec. 2-5. Votes required for exclusion.**

- (a) Exclusion of any person from Cherokee trust lands for a limited period of time not exceeding 90 days shall require a majority vote of the entire Tribal Council.
- (b) Exclusion of any person from Cherokee trust lands for more than 90 days or for an indefinite period of time shall require a two-thirds vote of the entire Tribal Council.
- (c) Permanent exclusion of any person from Cherokee trust lands shall require a three-fourths vote of the entire Tribal Council.
- (d) In this section, "a vote of the entire Tribal Council" means that the vote shall be calculated in the proportion of the number of Tribal Council members present at the exclusion hearing; provided, however, that not all Tribal Council members have to be present or vote at the hearing to satisfy this section, so long as not fewer than seven Council members are present and voting.

(Ord. No. 92, 5-5-1994; Ord. No. 530, 1-6-2005)

#### **Sec. 2-6. Enrolled members; permanent exclusion.**



If an enrolled Tribal member is permanently excluded from Cherokee trust lands, then the member's name shall be removed from the membership roll of the Tribe, and all privileges pertaining thereto shall immediately be suspended indefinitely. The removal of the person's name from the roll shall be submitted to the Superintendent of the Eastern Cherokee Agency for approval by the Secretary of the Interior or his authorized representative.

(Ord. No. 271, 7-24-1996)

### Sec. 2-7. Request for exclusion action.

The persons with standing to bring a request to the Tribal Council for an exclusion action against a person who is subject to this Chapter are:

- (1) The Principal Chief.
- (2) The Vice Chief.
- (3) Members of the Tribal Council.
- (4) The Chief of the Cherokee Police Department.
- (5) The Tribal Prosecutor.

Handwritten note: Contact one of these people to get the ball rolling. Legal cannot initiate the proceeding.

(Ord. No. 271, 7-24-1996; Ord. No. 757, 5-16-2001; Ord. No. 589, Art. III, 2-8-2007)

### Sec. 2-8. List of convictions for which exclusion is a punishment.

The Clerk of Cherokee Court shall semiannually provide Tribal Council with a list of all persons convicted of crimes during the preceding six months in which banishment is provided by statute. The list shall be transmitted no later than January 31, 2007 and every six months thereafter. The initial list shall include all persons convicted since April 1, 2000.

(Ord. No. 589, Art. III, 2-8-2007)

### Sec. 2-9. Emergency temporary exclusion.

(a) *Definitions.* For the purpose of this section the following definitions shall apply:

- (1) *Officer:* A sworn law enforcement officer of the Cherokee Police Department or any other law enforcement officer with the responsibility of enforcing Cherokee Law under authority of this code or a mutual aid agreement.
- (2) *Cherokee Officer:* A sworn law enforcement officer of the Cherokee Police Department only.
- (3) *Drug Offense:* Any act which would violate the provisions of Article XVI of Chapter 14 of the Cherokee Code committed within the territorial jurisdiction of the Eastern Band of Cherokee Indians, whether or not the Cherokee Court has jurisdiction over the individual committing the offense. Considering all appropriate aggravating factors which may be present, the term "Drug Offense" shall not include any act which would be punished as a class D offense under Cherokee law.
- (4) *Non-member:* Any person not officially enrolled as a tribal member in the Eastern

Band of Cherokee Indians

- (5) *Designated Official*: An individual designated by Cherokee Law to enforce the provisions of this section by issuing Writs of Emergency Temporary Exclusion. Any magistrate of the Cherokee Court shall be a designated official for the purposes of this Chapter.
  - (6) *Writ of Emergency Temporary Exclusion (Writ)*: A legally binding order issued by the designated official exercising the power of exclusion of Tribal Council excluding a non-member from the Cherokee Trust lands. The Writ shall clearly state on its face the date, time and location of the next scheduled Tribal Council session. Unless renewed by a vote of the Tribal Council in open council, the Writ shall expire at the end of the next regularly scheduled Tribal Council meeting following its issuance.
- (b) When a Law Enforcement Officer has probable cause to believe that a non-member has committed a Drug Offense, the officer shall bring the non-member before the designated official without unnecessary delay to determine whether a Writ of Emergency Temporary Exclusion is necessary to protect the integrity and law and order on Tribal lands and territory or the welfare of its members. The commission of any Drug Offense by a non-member shall constitute a per se threat to the integrity and law and order on Tribal lands and territory or the welfare of its members.
  - (c) The officer shall complete a sworn, written application for Writ of Emergency Temporary Exclusion. The application shall contain a written statement of the essential facts constituting the Drug Offense. If the application establishes probable cause to believe that a Drug Offense has been committed by a non-member, the designated official must issue Writ of Emergency Temporary Exclusion. Without exception, a copy of the application and Writ and any appropriate information considered by the Designated Official shall be transmitted to the English Clerk of Tribal Council no later than the beginning of the next scheduled Tribal council or 72 hours after the application was considered, whichever is sooner.
  - (d) Any Cherokee Officer shall be authorized to execute a Writ of Emergency Temporary Exclusion upon a named non-member. The Cherokee Officer shall execute the Writ by serving a copy of the Writ and application upon the non-member and transporting the non-member to any location outside the territorial jurisdiction of the Eastern Band of Cherokee Indians.
  - (e) The issuance and execution of a Writ of Emergency Temporary Exclusion shall be independent of any criminal charges filed against the non-member in Cherokee Court or any other jurisdiction.
  - (f) Regardless of whether a writ is issued, the non-member shall be given notice of the next scheduled meeting of Tribal Council and the application and writ shall be placed upon the agenda. A decision by the Designated Official regarding probable cause shall not be binding on Tribal Council and hearing before Council shall require a de novo review of all appropriate facts and determinations. If no Writ is issued upon application, the Tribal Council may review the facts and hold a proceeding for non-emergency exclusion. At the designated meeting or any subsequent scheduled meeting, Tribal Council may renew the Writ until the next scheduled session, complete the process of formal exclusion under this chapter, or decline to take further action.

- (g) The requirements of Cherokee Code Sections 2-2, 2-3, 2-4, 2-5, and 2-7 shall not apply to Writs of Temporary Emergency Exclusion issued under this section, but shall apply to all subsequent proceedings before Council.

(Ord. No. 589, Art. III, 2-8-2007)

The attached Resolution/Ordinance No. 196 dated February 7, 2008 was:

**PASSED ( X )**

**KILLED ( )**

and ratified in open Council on February 7, 2008 by 100 voting for the act and 0 members voting against it as follows:

VOTE	FOR	AGAINST	ABSTAIN	ABSENT	TABLE
Stephen Watty	X				
Perry Shell	X				
Jim Owle	X				
Mike Parker	X				
David Wolfe	X				
Alan Ensley	X				
Butch Goings	X				
Angie Kephart	X				
Abe Wachacha	X				
Susan Toineeta	X				
Marie Junaluska	X				
Tommye Saunooke	X				
<b>TOTAL</b>	100	0	0	0	0

*Mike Parker*

TRIBAL COUNCIL CHAIRMAN

*id BR JBSV*

CLERK

*Michelle Hicks*

PRINCIPAL CHIEF

APPROVED ( *✓* )

VETOED ( )

VETO UPHeld ( ) VETO DENIED ( )

DATE: 2/12/08

I hereby certify that the foregoing act of the Council was duly:

**PASSED ( )**

**KILLED ( )**

and ratified in open Council after the same has been interpreted by the Official Interpreter and has been fully and freely discussed.

In testimony, whereof, I have hereunto set my hand and affixed the seal of the said Band of Indians. Superintendent, Cherokee Indian Agency.

INTERPRETED ( )

OMITTED ( )