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**Attorneys for Plaintiffs**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION**

**EARLINE COLE,**  
**CLETUS COLE, and**  
**VERONICA SPRINGFIELD,**  
Plaintiffs,

v.

**FEDERAL BUREAU OF INVESTIGATIONS,**  
**BILLINGS, MONTANA OFFICE,**  
**UNITED STATES ATTORNEYS OFFICE**  
**FOR SOUTH DAKOTA,**  
**ERIC BARNHART,** in his official and

individual capacity,

**MARTY J. JACKLEY,** in his official and  
individual capacity,

**MAURA KOHN,** in her individual capacity,

**MATTHEW ORAVEC,** in his individual capacity,  
and

**ERNEST WEYAND,** in his individual capacity,  
Defendants.

) **Case No:**

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**COMPLAINT**

Jury Trial Demanded

Cletus Cole, Earline Cole and Veronica Springfield, by and through their undersigned attorneys, hereby bring this Complaint against the above-named defendants.

### **PARTIES**

1. Earline Cole (“Earline Cole”) is an individual, and a member of the Crow Tribe, and a current resident of Montana.
2. Cletus Cole (“Cletus Cole”) is an individual, married to Earline Cole, and a member of the Gros Ventre Tribe, and a current resident of Montana.
3. Veronica Springfield (“Springfield”) is an individual, and a member of the Crow Tribe, and a current resident of Montana.
4. The Federal Bureau of Investigations (“FBI”) is a federal agency of the United States Department of Justice, with the relevant office here located at 2929 3<sup>rd</sup> Avenue North, Room 205, Billings, Montana 59101.
5. The United States Attorney’s Office for South Dakota (“U.S. Attorney’s Office”) is a federal agency of the United States Department of Justice, with its principal office at 201 Federal Building, 515 9<sup>th</sup> Street, Rapid City, South Dakota 57701.

6. Eric Barnhart (“Barnhart”) is an individual and is currently the Senior Supervising Resident Agent in the Billings, Montana office of the FBI, whose business address is 2929 3<sup>rd</sup> Avenue North, Room 205, Billings, Montana 59101.

7. Marty J. Jackley (“Jackley”) is an individual and is currently the United States Attorney for South Dakota, whose business address is 201 Federal Building, 515 9<sup>th</sup> Street, Rapid City, South Dakota 57701.

8. Maura Kohn (“Kohn”) is an individual and is and was, at all times relevant to this complaint, an Assistant United States Attorney in the United States Attorneys Office for South Dakota, whose business address is 201 Federal Building, 515 9<sup>th</sup> Street, Rapid City, South Dakota 57701.

9. Matthew Oravec (“Oravec”) is an individual and was, at all times relevant to this complaint, a Special Agent in the Billings, Montana office of the FBI, whose business address 2929 3<sup>rd</sup> Avenue North, Room 205, Billings, Montana 59101.

10. Ernest Weyand (“Weyand”) is an individual and was, at times relevant to this complaint, the Supervising Agent in the Billings, Montana office of the FBI, whose business address is 2929 3<sup>rd</sup> Avenue North, Room 205, Billings, Montana 59101.

## **JURISDICTION**

11. The purpose of this action is to redress and restrain acts or practices by Defendants that federal law deems unlawful.

12. The Court has original jurisdiction over the subject matter of these claims pursuant to 5 U.S.C. §§702-706, 28 U.S.C. §1331, 42 U.S.C. §1985, and under *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971).

13. Venue for this action properly lies in the District of Montana pursuant to 28 U.S.C. §1391(b).

14. No cause of action requires exhaustion of administrative remedies.

## **NATURE OF THIS ACTION**

15. This is a case in which Defendants, individually and in concert, have intentionally failed to accord Earline Cole, Cletus Cole, and Veronica Springfield, as well as other members of federally- recognized Indian tribes, the equal protection of the law and due process required under the Constitution of the United States, by failing to investigate and prosecute, and hindering the investigation and prosecutions of cases involving Native American victims on and in the vicinity of the Crow Reservation.

## **FACTUAL ALLEGATIONS**

### **Background**

16. The Plaintiffs are members of the Crow Tribe or other federally-recognized Indian tribes and reside on or near the Crow Reservation.

17. The Plaintiffs each had close relatives who were victims of serious crimes and each would qualify as a “crime victim,” entitled to rights under the Crime Victims’ Rights Act, 18 U.S.C. §3771:

a. Earline Cole was the mother and Cletus Cole was the father of Steven Bearcrane-Cole, a young man murdered on a ranch within the Crow Reservation.

b. Veronica Springfield was the wife of Robert Springfield, a member of the Crow Tribe who died under suspicious circumstances on the Crow Reservation.

### **FBI Discrimination Against Indians in Investigation of Crimes**

18. The FBI Billings Montana Office was and is the federal law enforcement agency assigned to investigate major crimes on the Crow Reservation; which office was supervised by defendant Weyand, and is now supervised by defendant Barnhart.

19. The FBI agents assigned to investigate Mr. Bearcrane-Cole's death were defendants Weyand, a senior agent in the FBI Billings, Montana Office, and defendant Oravec.

20. Plaintiffs and others have repeatedly asked the FBI Billings Montana office and the individual defendants to do an adequate investigation of the crimes against their close relatives, to no avail.

21. The FBI Office in Billings, Montana, and the individual defendants have refused, and have followed a pattern and practice of refusing to adequately investigate crimes in which Native Americans are victims; for example:

a. It is undisputed that Steven Bearcrane-Cole, a member of the Crow Nation, was shot in the head and killed by a non-Indian on February 2, 2005, at a ranch located on the Crow Indian Reservation.

b. Defendant Oravec, who was the special agent in charge of investigating the murder of Steven Bearcrane-Cole; and defendant Weyand, who was the supervising agent, refused to do anything but the most cursory investigation, despite compelling facts, among others:

(i) The Coroner ruled Mr. Bearcrane-Cole's death a homicide;

- (ii) A non-Indian man admitted to shooting Mr. Bearcrane-Cole;
- (iii) Upon information and belief, the same non-Indian man admitted to a third party that he had shot Mr. Bearcrane-Cole in the head during a dispute over a horse;
- (iv) The evidence appears to counter the self-defense claim made by the non-Indian man.

c. It is undisputed that Robert Springfield, a member of the Crow Nation, died under suspicious circumstances on the Crow Indian Reservation, after having been missing for over a year; and, despite compelling facts in that case, the FBI, among other actions:

- (i) Failed to investigate his disappearance;
- (ii) After Mr. Springfield's body was found, failed to investigate his death, even though many witnesses were available and desired to be interviewed;
- (iii) Failed to positively identify the remains even though there was compelling evidence for the identification.

d. Upon information and belief, defendant FBI and individual

defendants Oravec and Weyand consistently closed cases involving Indian victims without adequate investigation, especially sexual and other assaults involving Indian children and women. The human rights group “Amnesty International” has documented the deplorable lack of investigation and prosecution of sexual abuse involving Native Americans.

<http://www.amnestyusa.org/document.php?id=ENGAMR510352007>.

22. Defendant Oravec not only refused to perform adequate investigations of crimes in which Native Americans were victims, but acted affirmatively to hinder the investigation of those crimes and to prevent victims from receiving assistance and other rights afforded crime victims under federal law, for example:

a. When Earline and Cletus Cole visited the FBI offices to ask about the investigation into their son’s murder, defendant Oravec attempted to intimidate Cletus Cole by taking Mr. Cole out of the range of cameras and showing Mr. Cole his gun;

b. Upon information and belief, defendant Oravec told the state crime victims compensation office that Mr. Bearcrane-Cole had caused his own death;



c. On many occasions, defendant Oravec actively interfered with the work of county officials, including the county coroner, regarding Indian cases, including the cases of Steven Bearcrane-Cole and Robert Springfield; and

d. Defendant Oravec refused to return some remains and to provide relevant documents and other information about Mr. Springfield to his wife, plaintiff Springfield.

23. Defendant Oravec not only refused to perform adequate investigations of crimes in which Native Americans were victims, but acted to prevent victims from receiving assistance and other rights afforded crime victims under federal law, for example:

a. Upon information and belief, defendant Oravec told the state crime victims compensation office that Mr. Bearcrane-Cole had caused his own death, thus making Mr. Bearcrane-Cole's close relatives ineligible for benefits and other rights afforded by federal law;

b. Despite the fact that the Victim's Advocate Specialist is the FBI's normal contact with the state crime victims compensation office, upon information and belief, defendant Oravec told that office to contact him directly about anything related to benefits or assistance in the Bearcrane-Cole case; and

c. Defendant Oravec failed to positively identify the remains of Robert Springfield, even though there was compelling evidence for the identification, failed to provide plaintiff Springfield with necessary information; and delayed getting a death certificate to plaintiff Springfield, thereby denying plaintiff Springfield (and her children) benefits available and due to them;

*U.S. Attorney's Office Discrimination Against Indians in Prosecution of Crimes*

24. The U.S. Attorney's Office in South Dakota has a pattern and practice of refusing prosecutions in cases in which the victims of those crimes are Native Americans. <http://www.usccr.gov/pubs/sac/sd0300/ch2.htm>.

25. The case of the murder of Steven Bearcrane-Cole was referred to the U.S. Attorney's Office in South Dakota because of a conflict on the part of the U.S. Attorney's Office for Montana.

26. The Assistant U.S. Attorney assigned to review a prosecution in the Bearcrane-Cole case was defendant Kohn, who had worked with defendant Weyand for a significant time in South Dakota.

27. Plaintiffs Cletus Cole, Earline Cole and others have repeatedly asked defendant U.S. Attorney's Office and the individual defendants to prosecute the person who shot their son, Steven Bearcrane-Cole, including, but not limited to:

a. Meeting personally with defendant Kohn on several occasions;  
and

b. In April of 2008, traveling to Rapid City, South Dakota to meet with defendants Jackley and Kohn to personally inform them about the inadequate and discriminatory investigation of their son's murder, and the arbitrary and discriminatory nature of the decision not to prosecute the murderer.

28. In the April, 2008, meeting, defendants Jackley and Kohn told Earline and Cletus Cole that they would review the murder of Steven Bearcrane-Cole again, and Jackley committed to get back to the Coles with the results of his review.

29. Despite the pleas of Earline and Cletus Cole and their presentation of substantial evidence, and despite defendants Jackley and Kohn's commitment, almost a year ago, to re-evaluate the case and get back to the Coles, defendants U.S. Attorney's Office, Jackley and Kohn have not gotten back to the Coles with the results of any review, and have not initiated any prosecution of the person who has admitted to shooting Steven Bearcrane-Cole.

Damages

30. Earline and Cletus Cole have suffered and continue to suffer economic damages from the actions of the Defendants, including, but not limited to lost income, lost benefits, travel expenses to plead with Defendants to adequately investigate and prosecute the murder of their son, and expenses involved with preparation of materials for presentation to Defendants.

31. In addition, Earline Cole has suffered and continues to suffer severe emotional and physical damages, including, but not limited to depression, loss of sleep, loss of appetite, loss of enjoyment of life, stomach problems, severe headaches, and loss of family relations and structure; while Cletus Cole has suffered and continues to suffer depression, loss of appetite and weight, severe stomach aches, loss of enjoyment of life, and loss of family relations and structure.

32. Veronica Springfield has and continues to suffer economic damages from the actions of the Defendants, including, but not limited to loss of income and death benefits.

33. In addition, Veronica Springfield has suffered and continues to suffer severe emotional and physical damages, including, but not limited to depression, loss

of sleep, loss of appetite, loss of enjoyment of life, stomach problems, severe headaches, and loss of family relations and structure.

34. All Plaintiffs have suffered loss of assistance and benefits provided them under the Crime Victims Rights Act of 2004, 18 U.S.C. §3771, as well as other federal and state statutes because of delay, and/or failure on the part of Defendants to adequately investigate and/or prosecute crimes.

### **VIOLATIONS**

35. As to the following claim for relief, paragraphs 1 through 34 above are incorporated by reference and re-alleged as if fully set forth in the claim.

#### **FIRST CLAIM FOR RELIEF (Violation of Fifth Amendment -Equal Protection)**

36. The Defendants are either federal agencies or employees of the United States Department of Justice.

37. Through the actions described above, especially the actions of:

- a. Defendants FBI, Barnhart, Oravec and Weyand refusing, in general, to investigate and/or to adequately investigate crimes that involve Native American victims in or near the Crow Reservation;

b. Defendants FBI, Barnhart, Oravec and Weyand refusing, in particular, to investigate and/or to adequately investigate the murders of Steven Bearcrane-Cole and Robert Springfield;

c. Defendants U.S. Attorneys Office, Jackley and Kohn refusing, in general, to prosecute crimes that involve Native American victims;

d. Defendants U.S. Attorneys Office, Jackley and Kohn refusing, in particular, to prosecute the murder of Steven Bearcrane-Cole;

e. Defendant Oravec and Weyand interfering with adequate investigations and/or prosecutions of crimes on the Crow Reservation that involve Native American victims; and

f. Defendant Oravec acting to prevent Native American victims from receiving assistance and other rights afforded crime victims under federal law; among other actions, the defendants individually and in concert, conspired to and did deprive the Plaintiffs of equal protection under the law by discriminating against Native Americans in the investigation and/or prosecution of crimes, and/or in the affording of rights as crime victims, thus violating the Fifth Amendment to the U.S. Constitution.

38. In their actions, the Defendants acted intentionally, and in a willful

and wanton manner, for example, despite the pleas of Earline and Cletus Cole, and Veronica Springfield and their presentations of substantial evidence, Defendants have refused to adequately investigate and/or prosecute the murder of Steven Bearcrane-Cole, and/or the disappearance and death of Robert Springfield, among other actions.

39. As a result of Defendants' actions, individually and collectively, Plaintiffs have been deprived of the equal protection of the law, and have suffered damages to their person and property, including but not limited to those damages described above.

**SECOND CLAIM FOR RELIEF**  
**(Violation of Fifth Amendment -Due Process)**

40. The Defendants are either federal agencies or employees of the United States Department of Justice.

41. Through the actions described above, especially the actions of:
- a. Defendants FBI, Barnhart, Oravec and Weyand refusing, in general, to investigate and/or to adequately investigate crimes that involve Native American victims in or near the Crow Reservation;
  - b. Defendants FBI, Barnhart, Oravec and Weyand refusing, in

particular, to investigate and/or to adequately investigate the murders of Steven Bearcrane-Cole and Robert Springfield;

c. Defendants U.S. Attorneys Office, Jackley and Kohn refusing, in general, to prosecute crimes that involve Native American victims;

d. Defendants U.S. Attorneys Office, Jackley and Kohn refusing, in particular, to prosecute the murder of Steven Bearcrane-Cole;

e. Defendant Oravec and Weyand interfering with adequate investigations and/or prosecutions of crimes on the Crow Reservation that involve Native American victims; and

f. Defendant Oravec acting to prevent Native American victims from receiving assistance and other rights afforded crime victims under federal law; among other actions, the defendants individually and in concert, conspired to and did deprive the Plaintiffs of due process of the law by depriving them, without reason or process, of liberty and property interests guaranteed under the U.S. Constitution.

42. In their actions, the Defendants acted intentionally, and in a willful and wanton manner, for example, despite the pleas of Earline and Cletus Cole, and Veronica Springfield and their presentations of substantial evidence, Defendants



have refused to adequately investigate and/or prosecute the murder of Steven Bearcrane-Cole, and/or the disappearance and death of Robert Springfield, among other actions.

43. As a result of Defendants' actions, individually and collectively, Plaintiffs have been deprived of due process of the law, and have suffered damages to their person and property, including but not limited to those damages described above.

### **PRAYER FOR RELIEF**

A. In view of all of the preceding, Plaintiffs respectfully request that this Court award, adjudge and decree that:

(1) The conduct alleged is violative of the Constitution of the United States and of Plaintiffs' rights thereunder;

(2) In accordance with federal law, including, but not limited to *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971),

(a) Individual defendants pay to plaintiffs an amount – the exact total of which is presently undetermined – comprised of

(I) The actual damages they have sustained as a result of such violations, economic and emotional, and

(II) Exemplary or punitive damages;

(b) Plaintiffs be awarded his costs of suit, including reasonable attorneys' fees and costs;

(c) Interest on the above; and

B. Plaintiffs have such other, further and different relief as this Court deems just and proper.

### **DEMAND FOR JURY TRIAL**

In accordance with Fed. R. Civ. P. 38(b), Plaintiffs hereby demand a trial by jury.

**DATED** this 23<sup>rd</sup> day of February, 2009.

Respectfully submitted:

*s/Jean Bearcrane*

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Jean Bearcrane

*s/Patricia S. Bangert*

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Patricia S. Bangert

***Attorneys for Plaintiff***

**PLAINTIFF'S DECLARATION**

A. I understand that I must keep the Court informed of my current mailing address and that my failure to do so may result in the dismissal of this Complaint without actual notice to me.

B. I declare under penalty of perjury that I am the plaintiff in the above action, that I have read the above complaint, and that the information that I have set forth within it is true and correct. 28 U.S.C. §1746; 18 U.S.C. § 1621.

Executed at 8416 Hwy 87 East, Billings, Montana 59101 on this 23<sup>rd</sup> day of February, 2009.

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*s/Earline Cole*

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Earline Cole

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Executed at 8416 Hwy 87 East, Billings, Montana 59101 on this 23<sup>rd</sup> day of February, 2009.

*s/Cletus Cole*

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Cletus Cole

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Executed at P.O. Box 674, Lodge Grass, Montana 59050 on this 23<sup>rd</sup> day of February, 2009.

*s/Veronica Springfield*

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Veronica Springfield