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13 **Attorneys for Plaintiff**

14 IN THE UNITED STATES DISTRICT COURT
15 IN AND FOR THE DISTRICT OF ARIZONA

16 NAVAJO NATION, as a representative of)
17 Tiffany Robbins, and en parens patriae on) No.
18 behalf of all members of the Navajo Nation)
19 who reside in or visit the City of Winslow.)

20 Plaintiff,

21 Vs.

22 **CIVIL RIGHTS COMPLAINT
23 FOR DAMAGES**

24 JEFFERSON SESSIONS, Attorney General)
25 of the United States, JAMES F. FELTE, JR.,)
26 Acting Chief of the U.S. Department of)
Justice Civil Rights Division, CITY OF)
WINSLOW, an Arizona municipality,)
FORMER WINSLOW POLICE OFFICER)
AUSTIN SHIPLEY, WINSLOW POLICE)
OFFICER ERNESTO CANO, FORMER)
WINSLOW POLICE CHIEF STEPHEN)
GARNETT, in their individual and official)
capacities,

Defendants.

Comes now the Plaintiff who alleges:

INTRODUCTION

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1. This action for declaratory and injunctive relief is based on the harm inflicted on the Navajo Nation through the wrongful death of Loreal Juana Tsingine by Austin Shipley, while acting in his capacity as a law enforcement officer of the Winslow Police Department and the subsequent refusal by local, state and federal authorities to take action to address this violation of civil and constitutional rights.

2. This civil action for declaratory and injunctive relief is brought pursuant to 42 U.S.C. §§ 1983, 1985(3) and 1988; the Fourth and Fourteenth Amendment of the United States Constitution; *Bivens v. Six Unknown Agents of the Federal Bureau of Narcotics*.

PARTIES

3. Plaintiff NAVAJO NATION is a sovereign Indian Nation, recognized by the United States, with lands located in Utah, Arizona, and New Mexico. 81 Fed. Reg. 5019, 5022 (Jan. 29, 2016). Loreal Tsingine was an enrolled member of the Navajo Nation and was entitled to all benefits and rights attendant to membership. The Navajo Nation has a direct interest in protecting the rights and ensuring the safety of its members and as such is proceeding en parens patriae on behalf of its deceased member, Loreal Tsingine, and all members of the Nation who reside in or visit the City of Winslow.

4. Defendant City of Winslow is and was at all times relevant to the facts alleged herein a municipal corporation, duly organized and existing under the laws of the State of Arizona. Defendant City of Winslow is responsible for the actions, omissions, policies, procedures, practices and customs of its various agents and agencies, including the Winslow Police Department and its agents and employees. At all times relevant to the facts alleged herein, the City of Winslow was responsible for assuring that the actions, omissions, policies, procedures, practices and customs of

1 the Winslow Police Department and its employees complied with the laws and Constitution of the
2 United States and of the State of Arizona. The constitutional violations and torts committed by the
3 Defendants resulted from policies and customs of the City of Winslow.

4 5. Defendant Austin Shipley was at all times relevant to the facts alleged herein a duly
5 appointed officer of the Winslow Police Department, acting within the course and scope of his
6 employment and under color of state law. Defendant Shipley is being sued in his individual
7 capacity.
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9 6. Defendant Ernest Cano is and was at all times relevant to the facts alleged herein a
10 duly appointed officer of the Winslow Police Department, acting within the course and scope of his
11 employment and under color of state law. Defendant Cano is being sued in his individual capacity,
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13 7. Defendant Stephen Garnett, was at all times relevant to the facts alleged herein, the
14 duly appointed chief of police of the Winslow Police Department acting within the course and scope
15 of his employment and under color of state law. Defendant Garnett was responsible for the hiring,
16 training and supervision of all of the officers of the Winslow Police Department. Defendant Garnett
17 is being sued in his individual capacity.

18 8. Defendant Jefferson Sessions is the Attorney General for the United States of
19 America and as such is in charge of the United States Department of Justice. Defendant Sessions is
20 responsible for enforcing the laws of the United States, and when decisions were made regarding
21 circumstances relevant to this complaint, Defendant Sessions was acting in his official capacity as an
22 officer and official of the United States.
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24 9. Defendant James F. Felte, Jr. is the acting Chief of the Civil Rights Division of the
25 Department of Justice. In that position he is responsible for enforcing the civil rights laws of the
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1 United States, and when decisions were made regarding circumstances relevant to this complaint,
2 Defendant Felte was acting in his official capacity as an officer and official of the United States.

3 10. At all times relevant to the facts alleged herein, Defendants Shipley, Cano and
4 Garnett were duly appointed, qualified and sworn personnel and/or officers of the Winslow Police
5 Department and were acting within the course and scope of their employment and/or agency and
6 under color of state law.

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8 11. All acts and failures to act alleged herein were duly performed by and attributable to
9 Defendants Shipley, Cano and Garnett, each acting as agent, employee or under the direction and
10 control of the others. All such acts and failures to act were within the scope of such agency and/or
11 employment and under color of law, and Defendants Shipley, Cano and Garnett participated in,
12 approved and/or ratified the acts and omissions of other Defendants complained of herein.

13 **FACTUAL ALLEGATIONS RELEVANT TO ALL CAUSES OF ACTION**

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15 12. On March 27, 2016, Loreal Tsingine, a member of the Navajo Nation was living off
16 the Navajo Reservation in the City of Winslow, Arizona.

17 13. The Navajo Nation borders the City of Winslow to its north.

18 14. The population of the city of Winslow is approximately 9,600 people.¹

19 15. In 2010, American Indians made up 25.7% of the City of Winslow population.²

20 16. Many Navajo Nation members, residing on the Nation, work or attend school in the
21 City of Winslow.
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25 ¹ U.S. Census Bureau, <http://www.census.gov/quickfacts/table/PST045215/0483930>.

26 ² *Id.*

1 17. In addition, Navajo members travel to the City of Winslow to shop and access
2 services.

3 18. It is estimated Navajo members spend 75 percent of every dollar in border towns such
4 as the City of Winslow.

5 19. The Navajo Nation has a responsibility to protect the welfare and defend the rights of
6 tribal members who reside in or visit the City of Winslow.

7 20. Native Americans experience death by law enforcement at a higher rate than any
8 other racial group.

9 21. Native Americans are 0.8 percent of the U.S. population but comprise 1.9 percent of
10 police killings.

11 22. In the year Ms. Tsingine was killed, Native American deaths caused by police
12 shooting almost doubled, increasing from 5.49 per one (1) million people in 2015 to 10.13 per one
13 (1) million people in 2016.

14 23. Although Native Americans account for 25 percent of Winslow's population, they
15 averaged nearly 64 percent of arrests from 2012 to 2015.

16 24. On March 27, 2016 multiple 911 calls were made regarding alleged incidents of
17 shoplifting at a Circle K store in Winslow, Arizona.

18 25. A Circle K employee was interviewed about these alleged incidents of shoplifting and
19 she indicated that Ms. Tsingine was the suspect involved.

20 26. However, at no time did the Circle K employee indicate that Ms. Tsingine was violent
21 or used any physical force or threats of physical force during the commission of the alleged
22 shoplifting incidents.

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1 27. The Circle K employee did indicate that Ms. Tsingine had a pair of scissors with her
2 on the last occasion when she entered the store, and she described the scissors as “hospital scissors,”
3 and that they were “not that big.”

4 28. In her interview, the Circle K Employee indicated that Ms. Tsingine left the Circle K
5 shortly before Defendant Cano entered the store.

6 29. The Circle K Employee saw another officer, apparently Defendant Shipley, leaving
7 the store parking lot as Defendant Cano was entering the store.

8 30. The Circle K employee indicated that Ms. Tsingine appeared to be “a little out there.”

9 31. Ms. Tsingine did have a history of mental health related issues.

10 32. The Winslow Police Department does not provide any training or guidance to its
11 officers regarding interactions with people with mental health issues, and Defendant Garnett did
12 nothing to ensure that the officers under his direction and supervision, including Defendants Shipley
13 and Cano, were trained to deal with people with mental health issues.

14 33. Eventually Officer Shipley saw Ms. Tsingine walking down the street near the Circle
15 K Store.

16 34. A body cam video taken on the date in question shows Defendant Shipley yelling out
17 the window of the vehicle to Ms. Tsingine who continued to walk away from Defendant Shipley.

18 35. Defendant Shipley exited his vehicle to pursue Ms. Tsingine on foot. At some point
19 Ms. Tsingine turned around and faced Defendant Shipley.

20 36. In a post-shooting interview, Defendant Shipley indicated that Ms. Tsingine had a
21 “blank stare” and was not acting “normal” when he confronted her.
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1 37. Despite these indications and the fact that Ms. Tsingine was a suspect to a non-violent
2 misdemeanor, Defendant Shipley decided that he needed to handcuff Ms. Tsingine for his and
3 Defendant Cano's "safety."

4 38. Up to that point Defendant Shipley had seen no weapons in Ms. Tsingine's
5 possession, nor did he have any information that she was armed.
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7 39. According to a report from the Office of the Navajo County Medical Examiner, at the
8 time of her death Ms. Tsingine was five (5) feet tall and weighed one hundred five (105) pounds.

9 40. Defendant Shipley was five feet eleven inches (5'11") tall and weighed two hundred
10 (200) pounds on the date he confronted and killed Ms. Tsingine.

11 41. The dash cam video from Defendant Shipley's vehicle shows that he had control of
12 Ms. Tsingine's arm and was physically pushing her to the ground.
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14 42. Defendant Shipley essentially had Ms. Tsingine on the ground and would have
15 handcuffed her shortly thereafter.

16 43. Instead, alleging that he saw a small pair of scissors in her hand, Defendant Shipley
17 released Ms. Tsingine and allowed her to get up off the ground.

18 44. The dash cam video then shows Ms. Tsingine walking toward Defendant Shipley.

19 45. Defendant Shipley had drawn his pistol, and was moving back towards his vehicle,
20 which was parked on the scene and was readily accessible to him.
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22 46. Defendant Shipley made no attempt to retreat into his vehicle, nor did he attempt to
23 employ any less than lethal force against Ms. Tsingine.

24 47. At the time Defendant Shipley was dealing with Ms. Tsingine he had a Taser and a
25 flexible baton in his possession.
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1 48. Defendant Shipley made no attempt to use either of these less than lethal items prior
2 to shooting Ms. Tsingine to death.

3 49. Defendant Shipley was also wearing body armor that is designed to stop bullets.

4 50. This body armor would have certainly been sufficient to prevent Defendant Shipley
5 from being stabbed with the small scissors that Ms. Tsingine had in her hand,
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7 51. Instead, Defendant Shipley fired his service weapon at Ms. Tsingine five (5) times.

8 52. The dash cam video shows Ms. Tsingine being hit multiple times.

9 53. The force of at least one of the shots spun her around such that Defendant Shipley's
10 last shot entered Ms. Tsingine's back.

11 54. Ms. Tsingine then fell to the ground and died shortly thereafter.

12 55. In a post interview statement, Defendant Cano told investigators that he was just
13 arriving on the scene when he saw Defendant Shipley interacting with Ms. Tsingine.
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15 56. Defendant Cano told investigators that he saw Defendant Shipley pushing Ms.
16 Tsingine to the ground.

17 57. Defendant Cano also testified that he "saw her starting to get up."

18 58. Defendant Cano did not say that he saw Ms. Tsingine resisting Officer Shipley, nor
19 did he indicate that Defendant Shipley was unable to control Ms. Tsingine.
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21 59. Defendant Cano also stated that he stepped back so as to be out of Defendant
22 Shipley's line of fire but did nothing to deter Defendant Shipley from shooting Ms. Tsingine.

23 60. At no time in the post-shooting interview did Defendant Cano tell investigators that
24 he feared for his or Defendant Shipley's safety.
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1 61. Defendant Cano had been to the Circle K store earlier in the day for a call alleging
2 that Ms. Tsingine was shoplifting.

3 62. There was no indication in these earlier calls that Ms. Tsingine was suspected of any
4 offense other than the non-violent offense of shoplifting.

5 63. After the shooting, Defendant Cano called for medical personnel, but by the time they
6 arrived on the scene Ms. Tsingine was already dead.

7 64. On March 30, 2016 an autopsy was performed on the body of Loreal Tsingine at the
8 Office of the Pima County Medical Examiner.

9 65. The autopsy concluded that Ms. Tsingine's cause of death was "multiple gunshot
10 wounds" and that the manner of death was "homicide."

11 66. Additionally, the autopsy report noted that Ms. Tsingine had four bullet wounds in
12 her torso.

13 67. An investigation regarding the circumstances of the shooting of Ms. Tsingine was
14 conducted by the Arizona Department of Public Safety (DPS).

15 68. During this investigation, Defendant Shipley was interviewed regarding the
16 circumstances of the shooting.

17 69. Defendant Shipley was asked if he recognized Ms. Tsingine or if he had had any
18 dealings with her in the past.

19 70. Defendant Shipley told investigators that he did not recall ever having dealt with Ms.
20 Tsingine prior to the date of her death.

21 71. However, a review of Winslow Police Department records indicated that Defendant
22 Shipley had interacted with Ms. Tsingine on two occasions prior to the date of her death.
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1 72. On April 27, 2015 Defendant Shipley investigated a case in which Ms. Tsingine was
2 the victim of a sexual assault.

3 73. On August 29, 2013 Defendant Shipley performed a “welfare check” on Ms.
4 Tsingine’s residence, because a neighbor suspected that Ms. Tsingine was the victim of domestic
5 violence.

6 74. From those previous encounters it would have been apparent to Defendant Shipley
7 that Ms. Tsingine had mental health issues and was not a violent person.

8 75. At the conclusion of the DPS investigation a final report on the incident was
9 forwarded to the Maricopa County Attorney’s Office (MCAO) for a determination if prosecution
10 was warranted because of the shooting.

11 76. In a letter dated July 19, 2016 addressed to then-Winslow Police Chief Stephen
12 Garnett, the Law Enforcement Liaison at MCAO announced that it was the opinion of the MCAO
13 Shooting Review Board that “Officer Shipley did not commit any act that warrants criminal
14 prosecution.”

15 77. On April 6, 2016 Navajo Nation President, Russell Begaye, wrote to then-Attorney
16 General Loretta Lynch seeking an investigation into the shooting death of Loreal Tsingine.

17 78. On January 10, 2017, President Begaye wrote to then-Attorney General Loretta
18 Lynch, to again urge the United States Department of Justice (DOJ) to investigate the death of
19 Loreal Tsingine and asked that the DOJ “provide the justice that the Maricopa County denied
20 Loreal.”

21 79. President Begaye wrote an additional letter on January 16, 2017 seeking information
22 on the status of the DOJ investigation.

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1 80. In a letter dated March 3, 2017, Defendant James F. Felte, Jr., the Acting Assistant
2 Attorney General for the Civil Rights Division, responded to President Begaye that the investigation
3 into the circumstances of the death of Loreal Tsingine was ongoing.

4 81. On October 17, 2017 President Begaye received a letter with the results of the DOJ
5 Civil Rights Division’s investigation.

6 82. In that letter, Defendant Felte informed President Begaye that the Civil Rights
7 Division had completed its “extensive” investigation into the death of Loreal Tsingine.

8 83. Defendant Felte’s letter informed President Begaye that the Division had concluded
9 that “there is insufficient evidence to disprove the officer’s claim that he shot Mrs. Tsingine in self-
10 defense and in defense of a second officer who was nearby.”

11 84. As Attorney General of the United States, Defendant Jefferson Sessions is ultimately
12 responsible for the actions and inactions of the Department personnel under his direction.

13 85. Likewise, as the chief law enforcement officer in the United States, Defendant
14 Sessions is responsible for ensuring that the United States is protecting the civil and constitutional
15 rights of its citizens.

16 86. The refusal of Defendants Sessions and Felte to discharge their obligation to
17 thoroughly investigate the circumstances surrounding the killing of Loreal Tsingine and to prosecute
18 Defendant Shipley for her death violated their obligations to protect the civil and constitutional
19 rights of all citizens of the United States.

20 87. At the time of her death Loreal Tsingine had one minor daughter, Tiffany Robbins.

21 88. The father of Tiffany Robbins is Moe Robbins.
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1 89. On March 27, 2018 Moe Robbins assigned his claim on behalf of his and Loreal
2 Tsingine's daughter, Tiffany Robbins, to the Navajo Nation.

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4 **COUNT ONE**

5 (42 U.S.C. § 1983 against Defendants Shipley and Cano)
6 Wrongful Death

7 90. Plaintiff restates and incorporates by reference each and every allegation contained in
8 the foregoing paragraphs, as though fully set forth herein.

9 91. The Navajo Nation is a federally recognized tribal entity and Loreal Tsingine was a
10 member of the Navajo Nation.

11 92. The Navajo Nation has a responsibility to all its members to advocate for and protect
12 its members' rights and to act to ensure that violations of the rights of Navajo Nation members are
13 redressed.

14 93. Based on this, Plaintiff claims damages en parens patriae and as the representative of
15 the Tiffany Robbins under 42 U.S.C. §1983 against Defendants Shipley and Cano for violating the
16 civil rights of a registered Navajo Nation member while acting under color of state law.

17 94. Plaintiff claims damages to the constitutional right of Navajo Nation members to be
18 free from unreasonable seizure as guaranteed by the 4th Amendment of the United States
19 Constitution.

20 95. Defendant Shipley and Cano's actions on March 25, 2016 led to the wrongful death
21 of Loreal Tsingine, a registered member of the Navajo Nation.
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23 96. The wrongful and violent death of Loreal Tsingine at the hands of Defendants
24 Shipley and Cano has caused the Navajo Nation to sustain damages.
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COUNT TWO

(42 U.S.C. § 1983 against Defendant City of Winslow and Winslow Police Chief Garnett)
Wrongful Death

97. Plaintiff restates and incorporates by reference each and every allegation contained in the foregoing paragraphs, as though fully set forth herein.

98. The Navajo Nation is a federally recognized tribal entity.

99. At the time of her death, Loreal Tsingine was a registered member of the Navajo Nation.

100. The Navajo Nation has a responsibility to all its members to advocate for and protect its members' rights and to act to ensure that violations of the rights of Navajo Nation members are redressed.

101. As such, Plaintiff claims damages en parens patriae and as the representative for Tiffany Robbins, under 42 U.S.C. §1983 against the City of Winslow and its then-police chief, Stephen Garnett, for developing, implementing and maintaining policies or customs that exhibit deliberate indifference to the constitutional rights of persons who are arrested in the City of Winslow and for allowing the use of excessive and unnecessary force against members of the public.

102. Plaintiff claims damages to the constitutional right of Navajo Nation members to be free from unreasonable seizure as guaranteed by the 4th Amendment of the United States Constitution.

103. As a result of the violations of law, done with malice and reckless disregard for the rights of Navajo Nation member Loreal Tsingine, Plaintiff has suffered damages as aforesaid.

COUNT THREE

(Bivens Claim – 5th Amendment Violations Against Defendants Sessions and Felte [Violation of Equal Protection])

1 104. Plaintiff restates and incorporates by reference each and every allegation contained in
2 the foregoing paragraphs, as fully set forth herein.

3 105. Defendants Sessions and Felte's refusal to take action against Defendants Shipley and
4 Cano violates the right of Navajo Nation members to equal protection of the laws.

5 106. Plaintiff claims damages to the constitutional right of Navajo Nation members to
6 equal protection under the law as guaranteed by the 5th Amendment of the United States
7 Constitution.
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9 107. As a direct and proximate result of Defendants' actions the rights of the Navajo
10 Nation to equal protection were damaged.

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12 **CLAIM FOR RELIEF**

13 WHEREFORE, Plaintiffs ask that this court grant them the following relief:

- 14 a. General damages against Defendants in an amount to be determined upon
15 consideration of the evidence;
16 b. Punitive damages against Defendants in an amount to be determined upon
17 consideration of the evidence;
18 c. Injunctive relief directing Defendants Sessions and Felte to take appropriate
19 action against Defendants Shipley and Cano for the death of Loreal
20 Tsingine.
21 d. Issue injunctive relief against the City Defendants, to review and adopt new
22 policies dealing with lethal force; new protocols for dealing with people
23 with mental illness; and culturally-sensitive protocols in dealing with Native
24 Americans.
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- e. Costs of this suit;
- f. Attorneys' fees pursuant to applicable statutes, including, inter alia, 42 U.S.C. §§ 1983 and 1988;
- g. Granting any and all other relief that the court deems appropriate.

A JURY TRIAL IS REQUESTED IN THIS MATTER

REPECTFULLY SUBMITTED this 27th day of March 2018.

s/Katherine Belzowski
Staff Attorney
Navajo Nation Department of Justice

s/Paul Gattone
Paul Gattone
Law Office of Paul Gattone

Attorneys for Plaintiff