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

BLOSSOM OLD BULL, Personal
Representative of the Estate of Braven
Glenn,

Plaintiff,

v.

UNITED STATES OF AMERICA and DOES
1-10,

Defendants.

CV 22-109-BLG-KLD

**PLAINTIFF'S BRIEF IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

INTRODUCTION

On November 24, 2020, Braven Glenn, the 17-year-old son of Plaintiff Blossom Old Bull, died in a motor vehicle crash while being pursued at high

speeds by a tribal police officer on the Crow Indian Reservation in Montana.

Braven Glenn's vehicle left the roadway and crashed into a moving train that was on the tracks adjacent to the roadway. Braven was ejected from the vehicle and died at the scene.

Bureau of Indian Affairs law enforcement personnel were aware of the pursuit by the tribal officer as well as the lack of training and qualifications of the tribal police, but did not intervene to stop the pursuit. Bureau of Indian Affairs law enforcement personnel followed the pursuit and were at the crash site before Braven died. Bureau of Indian Affairs law enforcement personnel called for an ambulance to respond to the crash site, but later rescinded the request for an ambulance.

At all times relevant to this lawsuit, the United States Bureau of Indian Affairs was responsible for law enforcement on the Crow Indian Reservation. However, the BIA allowed a separate police force established by the tribe to begin policing on the Crow Reservation without authority from the United States. This rogue police force engaged in vigilante behaviors on the reservation without interference by the BIA, and the BIA allowed this rogue force to usurp the law enforcement obligations of the United States on the Crow Reservation.

Braven Glenn was killed in a high speed pursuit by a tribal officer who had no authority to police tribal members, but the BIA police did nothing to intervene to prevent this officer from usurping police functions from the BIA, and did nothing to intervene to prevent this officer from engaging in a dangerous and risky high speed chase that caused the death of Braven Glenn.

Plaintiff Blossom Old Bull asks this Court to rule that this failure to intervene allowed the tribal police to engage in the high speed pursuit that killed Braven Glenn, and enter summary judgment for Ms. Old Bull as a matter of law.

ARGUMENT

The federal government has a longstanding, specific fiduciary duty to provide effective to provide effective and adequate law enforcement services to tribal members within the Crow Reservation. *See United States v. Kagama*, 118 U.S. 375, 384 (1886) (“[D]ue to the course of dealing of the federal government with [the Tribes], and the treaties in which it has been promised, there arises the duty of protection, and with it the power.”); *Ex parte Crow Dog*, 109 U.S. 556, 569 (1883) (“The corresponding obligation of protection on the part of the government is ... that each individual shall be protected in his rights of property, person, and life, and that obligation was to be fulfilled by the enforcement of the

laws then existing to those objects, and by the future appropriate legislation which was promised to secure to them an orderly government.”). The Bureau of Indian Affairs, Office of Justice Services (“BIA-OJS”) provides uniformed patrol, dispatch and corrections functions on the reservation on a direct-service basis.

The Indian Law Enforcement Reform Act (“ILERA”), 25 U.S.C. Ch.

30, establishes and memorializes the federal government’s duty to provide law enforcement services to Indian tribes. 25 U.S.C. § 2802 states in relevant part:

(a) Responsibility of the Secretary. The Secretary [of the Interior], acting through the Bureau [of Indian Affairs], shall be responsible for providing, or for assisting in the provision of, law enforcement services in Indian country as provided in this Act.

(b) Office of Justice Services. There is established in the Bureau an office, to be known as the “Office of Justice Services”, that, under the supervision of the Secretary, or an individual designated by the Secretary, shall be responsible for—
(1) carrying out the law enforcement functions of the Secretary in Indian country, and

(2) implementing the provisions of this section.

(c) Additional responsibilities of Division. Subject to the provisions of this chapter and other applicable Federal or tribal laws, the responsibilities of the Office of Justice Services in Indian country shall include—

(1) the enforcement of Federal law and, with the consent of the Indian tribe, tribal law;

(2) in cooperation with appropriate Federal and tribal law enforcement agencies, the investigation of offenses against criminal laws of the United States;

(3) the protection life and property;

(4) the development of methods and expertise to resolve conflicts and solve crimes;

(5) the provision of criminal justice remedial actions, correctional and detention services, and rehabilitation

The Tribal Law and Order Act (“TLOA”), 25 U.S.C. § 2801 note, P.L. 111-211, provides that “the United States has distinct legal, treaty, and trust obligations to provide for the public safety of Indian country” The legislative history of the TLOA confirms that Congress enacted the TLOA in furtherance of the United States’ trust responsibility for Indian country law enforcement. “The result of these federal laws and Court decisions is that along with the authority that the United States imposed over Indian tribes, it incurred significant legal and moral obligations to provide for public safety on Indian lands.” S. Rep. 111-93 at 4 (2009).

The regulations promulgated by BIA to “ensure that law enforcement, crime prevention and recidivism reduction programs are implemented and maintained in ... compl[iance] with the [ILERA]” also set forth and reinforced the agency’s duty to provide law enforcement services for tribes. 62 Fed. Reg. at 15610 (April 2, 1997). The regulations establish, *inter alia*: It is not fair to law abiding citizens of Indian country to have anything less than a professional law enforcement program in their community. Indian country law enforcement programs that receive Federal funding and/or commissioning will be subject to a

periodic inspection or evaluation to provide technical assistance, to ensure compliance with minimum Federal standards, and to identify necessary changes or improvements to BIA policies. 25 C.F.R. §12.12. Additionally, “[t]he Commissioner of Indian Affairs, or in the absence of a Commissioner, the Deputy Commissioner, is responsible for Bureau of Indian Affairs-operated and contracted law enforcement programs, and for overall policy development and implementation of the [ILERA].” 25 C.F.R. §12.1. Moreover, the notice of promulgation of these regulations as a final rule expressly stated that ILERA specified changes for the BIA and tribal law enforcement and detention programs to be implemented as rules by “the Secretary of the Interior who was given the overall responsibility for providing or assisting in the provision of law enforcement services in Indian country....” 62 Fed. Reg. at 15610.

The United States, through BIA-OJS, manages law enforcement on the Crow Reservation and has responsibility for ensuring law and order within the Reservation. The United States has assumed the obligations of a trustee for law and order on the Reservation. As trustee, the United States has a fiduciary relationship and obligations of the highest responsibility to administer the trust with the greatest skill and care possessed by the trustee; its conduct ““should

therefore be judged by the most exacting fiduciary standards.” *Cobell v. Norton*, 240 F.3d 1801, 1099 (D.C. Cir. 2001)(quoting *Seminole Nation v. United States*, 316 U.S. 286, 297 (1942)).

The Indian Self-Determination and Education Assistance Act of 1975, also known as Public Law 93–638, 25 U.S.C. §450 *et seq.*, gives Native American tribes the opportunity to establish their own government functions by contracting with the Bureau of Indian Affairs (BIA). Thus, "638" departments are administered by tribes under contract with the BIA’s Division of Law Enforcement Services.

Typically, a 638 contract establishes the department’s organizational framework and performance standards and provides basic funding for the police function.

Officers and nonsworn staff of these 638 tribal police departments are tribal employees, while officers and staff in police departments administered by the BIA are Federal employees.

On June 15, 2015, the Memorandum of Agreement (MOA) between the Tribe and BIA-OJS concerning law enforcement services for the Crow Indian Reservation expired. SUF¶1. On February 7, 2018, BIA-OJS sent a letter to the tribal chairman and reminded the tribe that the MOA had expired and informed the tribe that, “The BIA-OJS, currently administers the law enforcement functions

for the Crow Indian Reservation and will continue to do so until such time as the Crow Tribe affirmatively elects to administer these program functions in accordance with provisions of the Indian Self Determination and Education Assistance Act of 1975 (P.L. 93-638), as amended.” SUF¶2. The tribe then hired a person named Terrel Bracken as its “Chief of Police.” SUF¶3. On March 22, 2018, BIA-OJS sent another letter to the tribal chairman, expressing concern about Bracken identifying himself as a tribal officer when no 6328 contract was in place, and again asserted, “BIA-OJS is currently responsible for and administers the law enforcement direct service functions for the Crow Indian Reservation and will continue to do so until such time as the Crow Tribe affirmatively elects and/or chooses to administer these program functions in accordance with provisions of the Indian Self Determination and Education Assistance Act of 1975 (P.L. 93-638), as amended.” SUF¶3.

On September 26, 2018, the Crow tribe sent notice to the BIA that the tribe intended to enter into a 638 contract with the BIA, and would submit a formal proposal. SUF¶4. In response the BIA-OJS sent a letter to the tribe on October 25, 2018, with information on submitting a proposal for the 638 contract. SUF¶5. The BIA-OJS sent a follow-up letter to the tribe on July 10, 2019, with suggestions to

assist the tribe in submitting a 638 contract. SUF¶16. On January 23, 2020, the BIA-OJS received a 638 contract proposal from the Crow tribe. SUF¶17. The BIA responded on January 24, 2020, informing the tribe of a timeline for the process. SUF¶18. Then, on February 10, 2020, the BIA-OJS informed the tribe of insufficiencies in the tribe's 638 proposal. SUF¶19. The tribe responded on March 13, 2020, attempting to address the BIAS-OJS concerns. SUF¶10. On March 31, 2020, and April 16, 2020, the BIA-OJS informed the tribe that the 638 proposal was still insufficient. SUF¶11. In April, May, and June, 2020, the tribe and the BIA-OJS worked out extensions to allow more time to get approval of the 638 proposal. SUF¶12. However, on August 27, 2020, the BIA-OJS formally rejected the Crow tribe's proposal to assume on the reservation with a 638 contract SUF¶13. After further attempts to submit 638 proposals that the BIA-OJS would accept, on December 9, 2020, after elections brought in a new tribal council and a new tribal chairman, the Crow tribe informed BIA-OJS that tribe was disbanding the tribal force that it had assembled and was no longer seeking a 638 contract with the BIA-OJS. SUF¶14.

On June 6, 2020, the Crow tribe sent out a press release announcing that it was establishing a tribal police force on the reservation without authority under

Public Law 93-638, and purporting to unilaterally terminate the BIA-OJS policing on the reservation. ^{SUF¶14}. However, policing on the Crow reservation was the obligation of the BIA, not the tribe. ^{SUF¶17}. On November 24, 2020, the day of Braven Glenn’s death, the BIA was “responsible for and administer[ed] the law enforcement direct service functions for the Crow Indian Reservation.” ^{SUF¶17}. The BIA cannot abdicate its treaty and statutory responsibility to provide law enforcement on the Crow reservation to the rogue bunch assembled by the tribe. However, here the BIA did just that: it abdicated its fiduciary responsibility to provide law enforcement on the Crow reservation and allowed a rogue untrained force that it had concerns about, ^{see SUF¶3}, to police Native Americans on the reservation, including Braven Glenn.

Tribes have inherent authority to police tribal members. *See Dry v. United States*, 235 F.3d 1249, 1254 (10th Cir. 2000)(“It is undisputed that Indian tribes have power to enforce their criminal laws against tribe members”); *See also United States v. Cleveland*, 356 F.Supp.3d 1215, 1282 (D.N.M. 2018)(“Tribal law enforcement officers enforcing Tribal laws against Tribal members are acting within inherent criminal jurisdiction”). Here, however, the Crow tribal police, as they existed on the Crow reservation in 2020, were not constituted or approved

by the tribal council. They appear to have been the personal project of the tribal chairman and funded by COVID relief funds from the federal government. Exhibit 19 at USA_109. There is no record of any act of the tribal council regarding the formation of the Crow tribal police – or the disbanding of the tribal police immediately after Braven Glenn was killed. SUF¶18. BIA-OJS was aware that the tribal officers were not trained, yet did not intercede to prevent them from carrying out police functions as if they were legitimate police officers. SUF¶18; Exhibit 19 at USA_106-10.

The fiduciary duty of the BIA to provide law enforcement on the Crow reservation included preventing a rogue vigilante force from operating on the reservation. Had the BIA intervened to prevent the tribal police from operating on the reservation, Braven Glenn would not have died. SUF¶19.

The Crow Nation Tribal Police Department did not have a policy for Vehicular Pursuits during the time-period of the fatality accident investigation. Chief Larry Tobacco was the “Chief of Police” for the Crow Nation Police Department during the fatality accident investigation. According to Chief Tobacco in his deposition, he stated that there were no set policies and procedures for their officers. Frank White Clay was the chairman for the Crow Nation Tribal

Police Department during the fatality accident investigation time-period. In deposition, White Clay was asked, “From your knowledge, do you know what policies and procedures the Crow Nation Tribal Police Department was following at the time?” He responded, “No. The --. We have not come across any handbooks, any policies and procedures, anything that was submitted or anything that was – any – anything they were following.” SUF¶¶20-22.

Geoffrey Eastman was a patrol sergeant for the Crow Nation Tribal Police Department during the fatality accident investigation. In deposition, he was asked, “In your experience with the Crow Nation Tribal Police Department, what policies did y’all follow?” He replied, “There were no policies in place. I was trying to get them to follow the BIA policy. Since it’s right there. I mean, we – we could have easily adopted it as tribal. But nobody wanted to. Nobody would hear me out.” There were no established vehicular pursuit policies and guidelines in place to assist Officer Pamela Klier in her pursuit decision making on November 24, 2020. SUF¶¶23-24.

Billings, Montana BIA-OJS Special Agent in Charge Lenora Nioce, when questioned about the Crow tribal police, called them “rogue,” and that they “weren’t recognized” by the US Attorney’s Office or Big Horn County, or us”

Exhibit 19 at USA_106-07. *See also* USA_109-10; 113. Rather than ignore the rogue force, it was the BIA-OJS's fiduciary duty to intervene on behalf of the Native Americans on the Crow reservation. The BIA failed to do so, and is therefore liable for the death of Braven Glenn.

CONCLUSION

Plaintiff Blossom Old Bull now asks the Court for summary judgment in this matter and asks the Court to rule in her favor as a matter of law. The BIA breached its fiduciary duty to the individual Native Americans on the Crow reservation, including Blossom Old Bull, by failing to intervene to control the rogue tribal police force. Had the BIA-OJS intervened to prevent the rogue policing, the tribal police would not have been able to initiate a high speed chase of Braven Glenn that led to the death of Braven Glenn.

DATED this 16th day of February, 2024.

/s/ Timothy M. Bechtold
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CERTIFICATE OF COMPLIANCE

Pursuant to LR 7.1, I certify that this brief is double-spaced in 14-point font and contains 2568 words, excluding caption, tables, and certificate of compliance. Pursuant to LR 7.1, this brief has no table of contents or table of authorities or list of exhibits included.

/s/ Timothy M. Bechtold