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

<p>BLOSSOM OLD BULL, Personal Representative of the Estate of Braven Glenn,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>UNITED STATES OF AMERICA and DOES 1-10,</p> <p>Defendants.</p>	<p>CV 22-109-BLG-KLD</p> <p>PLAINTIFF’S SUMMARY JUDGMENT RESPONSE/REPLY BRIEF</p>
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RESPONSE/REPLY

Braven Glenn was killed in a high speed pursuit by a tribal officer, 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.

After Blossom Old Bull became aware that the Crow tribal police force was in fact a sham vigilante group that had not been approved by a 638 contract or approved by the Crow tribal council, Blossom Old Bull amended her Complaint to bring in negligent failure to intervene claims. In Count 4 of her Second Amended Complaint in this matter, Plaintiff Blossom Old Bull alleged as follows:

At all times pertinent to this Complaint, Defendant Klier and Defendant Does were subject to a duty of care under state law in the exercise of the police function to protect Braven Glenn's constitutional, statutory, and common law rights. The conduct of Defendants as set forth in this Complaint does not comply with the standard of care, and included negligent pursuit; negligent failure to intervene; negligent training, supervision and discipline of law enforcement officers; negligent enactment, enforcement, and violation of law enforcement policies and procedures; negligent violation of Braven Glenn's constitutional, statutory, and common law rights; and negligent performance of official duties.

Doc. 17 ¶¶60. *See also* Doc. 9 ¶¶58. *Cf.* Doc. 1 ¶¶52. Blossom Old Bull’s Amended Complaints added the “negligent failure to intervene” allegation and included “negligent enactment, enforcement, and violation of law enforcement policies and procedures; negligent violation of Braven Glenn’s constitutional, statutory, and common law rights; and negligent performance of official duties.” Thus the government was put on notice of Ms. Old Bull’s claims.

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 “rogue” tribal police, but did not intervene to stop the pursuit. 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. On November 24, 2020, the day of Braven Glenn’s death, the BIA stated that it was “responsible for and administer[ed] the law enforcement direct service functions for the Crow Indian Reservation.” SUF¶¶17.

The government claims that the Crow tribal police force was “formed under authority of sovereign tribal law.” Doc. 35 at 8. But this simply not true. The tribal chairman acted unilaterally – without authority under tribal code – and created a

what amounted to a personal vigilante force. The Crow tribal police were not constituted or approved by the tribal council pursuant to tribal code. There is no record of any act of the tribal council regarding the formation of the Crow tribal police – or the subsequent disbanding of the tribal police immediately after Braven Glenn was killed. ^{SUF¶18}. Blossom Old Bull does not dispute that the tribe had the authority to create its own police force, but that did not happen here. There was no legal authority under tribal law or federal law for the existence of Crow tribal police.

The government argues next that there is no analogous private person liability under Montana law for the BIA's failure to intercede in the activities of the rogue vigilante force on the Crow Indian Reservation. The FTCA's waiver of sovereign immunity is limited to "circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred." 28 U.S.C. § 1346(b)(1); see *also* 28 U.S.C. § 2674 ("The United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances...."). Here, liability does attach to the BIA because an exception to Montana's public duty doctrine applies, thus Montana law

does support a finding of liability. As the Montana Supreme Court discussed in *Nelson v. Driscoll*, 295 Mont. 363 (1999), an exception to the public duty doctrine's immunity provision arises when a “special relationship” between the victim and officer has been created. *Nelson*, ¶ 22. A special relationship gives rise to a special duty, and can be established under any one of the following circumstances:

1) by a statute intended to protect a specific class of persons of which the plaintiff is a member from a particular type of harm; 2) when a government agent undertakes specific action to protect a person or property; 3) by governmental actions that reasonably induce detrimental reliance by a member of the public; and 4) under certain circumstances, when the agency has actual custody of the plaintiff or of a third person who causes harm to the plaintiff.

Nelson, ¶ 22.

Here the BIA affirmatively asserted that it was providing law enforcement on the Crow reservation, and specifically rejected the Crow tribe’s 638 application, thus members of the tribe, like Braven Glenn and Blossom Old Bull, were reasonably induced into detrimental reliance on the BIA’s promise of providing law enforcement. Moreover, as discussed at length in Blossom Old Bull’s brief in support of summary judgment, BIA officers have a special relationship with Native Americans they police.

Finally, here Blossom Old Bull also alleges that the specific actions of the BIA officers at the scene of Braven's death directly caused harm, therefore any immunity under the public duty doctrine is inapplicable, and liability attaches. See *Bassett v. Lamantia*, 2018 MT 119, ¶¶18-22.

The government argues further that the tribe had the sovereign authority to create its own police force and the BIA had no duty, or even authority, to control the rogue vigilantes. Doc. 35 at 9-10. The government continues to offer the fictional argument that "the tribe had assembled its own police force using non-BIA, non-ISDEAA funds." Doc. 35 at 13. As noted above, however, the rogue vigilantes were not a creation of the tribe: they were a personal vigilante group assembled by the tribal chairmen without any authority under tribal code. It is certainly true that the tribe tried to create a 638 police force, but the BIA rejected the tribe's proposals. BIA Special Agent in Charge Lenora Nioce was certainly correct to label the chairman's folly a "rogue" force that was not "recognized" by the US Attorney's Office or Big Horn County, or the BIA. Exhibit 19 at USA_106-07. See also USA_109-10; 113.

The sovereign authority to police itself belonged to the tribe, not to a lone person acting outside of tribal codes and regulations to create a private vigilante group.

Next, the government argues that this Court lacks jurisdiction to hear Blossom Old Bull's claims. If she had brought her claims under the bad man clause of the Ft. Laramie Treaty of 1848, perhaps the Court of Claims would be the proper venue. However, as argued above, Blossom Old Bull's claims are brought under the Federal Tort Claims Act, and jurisdiction is proper in this Court.

Finally, the government argues that their expert's opinion trumps actual eyewitness testimony that Braven was alive and pleading for help and the BIA police prevented them from aiding Braven. Eyewitness testimony from Maurice Mountain Sheep, who came upon the crash scene soon after the crash, establishes that Braven was alive, asking for help, and BIA officers prevented him from providing aid to Braven. Declaration of Maurice Mountain Sheep ¶¶3-10.

For the foregoing reasons, 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, and deny the government's motion for summary judgment. Had the BIA-OJS intervened to prevent the rogue policing by the vigilante group

operating on the Crow Reservation, the vigilante 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 29th day of March, 2024.

/s/ Timothy M. Bechtold
BECHTOLD LAW FIRM, PLLC

CERTIFICATE OF COMPLIANCE

Pursuant to LR 7.1, I certify that this brief is double-spaced in 14-point font and contains 1513 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