

JUSTIN D. WHATCOTT, ID STATE BAR NO. 6444  
ACTING UNITED STATES ATTORNEY  
**ELLIOT B. WERTHEIM, NY STATE BAR NO. 5312509**  
**ASSISTANT UNITED STATES ATTORNEY**  
DISTRICT OF IDAHO  
1290 W. MYRTLE STREET, SUITE 500  
BOISE, ID 83702  
TELEPHONE: (208) 334-1211  
EMAIL: Elliot.Wertheim@usdoj.gov

Attorneys for The United States of America

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

Margaret Baker,

Plaintiff,

v.

Colton Howard, Richard Axtman, and Trustee  
of the Kootenai Jail – Jeremy Hyde,

Defendants.

Case No.

**NOTICE OF REMOVAL**

PLEASE TAKE NOTICE that defendants Colton Howard and Richard Axtman hereby  
remove the above captioned action from the state court in which it was initiated to this Court.

The grounds for removal are as follows:

1. Colton Howard and Richard Axtman are defendants in the above captioned civil  
action which was initiated in the District Court of the First Judicial District in  
Kootenai County, Idaho as case number CV28-24-4007. No trial has yet been had in  
the action. Copies of all process, pleadings, and orders served upon the defendants in  
this action are attached to this Notice of Removal.

2. Defendants Howard and Axtman are employees of the Coeur d'Alene Tribal Law Enforcement Services program. The Coeur d'Alene Tribal Law Enforcement Services (LES) program is operated pursuant to a contract under the Tribal Self-Governance provisions of the Indian Self Determination and Education Assistance Act (ISDEAA), Subchapter IV—Tribal Self-Governance. 25 U.S.C. §§ 5361 et seq.
3. Because the Coeur d'Alene Tribe's Law Enforcement Services program is an ISDEAA program, its employees are deemed to be federal employees for purposes of the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1346(b); 2671-2680, "while acting within the scope of their employment in carrying out the contract," *see* Pub. L. 101-512, Title III, § 314, Nov. 5, 1990, 104 Stat. 1959, as amended Pub. L. 103-138, Title III, § 308, Nov. 11, 1993, 107 Stat. 1416 ("Section 314") (See notes for 25 U.S.C. § 5321).
4. The Acting United States Attorney for the District of Idaho has certified that Defendants Howard and Axtman were acting within the scope of their employment in carrying under an ISDEAA contract at the time of the traffic stop underlying this action. Accordingly, Defendants Howard and Axtman are deemed federal employees for purposes of this action.
5. Here, plaintiff has brought Idaho state law claims against Defendants Howard and Axtman in state court. Defendants Howard and Axtman are, however, statutorily immune from state law claims under 28 U.S.C. § 2679(b). Under that provision, the exclusive remedy for the negligent or wrongful act or omission of an employee of the United States acting in the scope of office or employment is an action against the United States under FTCA.

6. Congress also provided in 28 U.S.C. § 2679(d)(2) that upon certification by the Attorney General that an employee acted within the scope of office or employment at the time of the incident out of which the plaintiff's claim arose, any civil action or proceeding commenced upon that claim in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States for the district and division embracing the place in which the action or proceeding is pending. The civil action or proceeding shall then be deemed to be an action or proceeding against the United States under the FTCA, and the United States shall be substituted as the party defendant. Congress also provided in § 2679(d)(2) that "[t]his certification of the Attorney General shall conclusively establish scope of office or employment for purposes of removal."
7. The Attorney General has delegated authority to certify scope of office or employment under § 2679 to the United States Attorneys and to the Directors of the Torts Branch of the Department of Justice Civil Division. *See* 28 C.F.R. § 15.4(a). Filed with this Notice of Removal is a Certification by the Acting United States Attorney for the District of Idaho that Defendants Howard and Axtman were acting in the scope of office or employment at the time of incident out of which the plaintiff's claims arose.
8. Accordingly this action must be deemed to be an action against the United States for purposes of the plaintiff's state law claims, and it is therefore removed under 28 U.S.C. § 2679(d)(2). *See Osborn v. Haley*, 549 U.S. 225 (2007).

WHEREFORE, this action is hereby removed under 28 U.S.C. § 2679(d)(2), and the United States must be deemed the defendant for purposes of Plaintiff's Idaho State law claims under 28 U.S.C. § 2679(d)(2).

DATED: March 12, 2025.

JUSTIN D. WHATCOTT  
ACTING UNITED STATES ATTORNEY  
By:

/s/ Elliot B. Wertheim  
ELLIOT B. WERTHEIM  
Assistant United States Attorney

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of the United States Attorney's Office for the District of Idaho, and that a copy of the foregoing **NOTICE OF REMOVAL** was mailed, postage prepaid, this 12<sup>th</sup> day of March 2025 to:

Margaret Baker  
P.O. Box 893  
Athol, ID 83801  
*Plaintiff*

Peter J. Smith, IV  
McKenzie R. Lawrence  
SMITH + MALEK  
601 E. Front Avenue, Suite 304  
Coeur d'Alene, Idaho 83814  
*Attorneys for Axtman and Howard*

/s/ Jessica Black  
JESSICA BLACK  
Legal Assistant