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UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO

MARGARET BAKER

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendants.

No. 2:25-cv-00136-BLW

**DEFENDANT UNITED STATES OF
AMERICA’S OPPOSITION TO
PLAINTIFF’S MOTION FOR DENIAL OF
REMOVAL (ECF No. 7)**

Defendant United States of America¹ respectfully submits this opposition to Plaintiff Margaret Baker’s Motion for Denial of Removal (ECF No. 7). Plaintiff’s motion should be denied because removal of this action to federal court was proper under 28 U.S.C. § 2679(d)(2).

I. BACKGROUND

Plaintiff filed a civil complaint in the District Court of the First Judicial District of the State of Idaho seeking damages based on allegations that two employees of the Coeur d’Alene Tribe, Colton Howard (Howard) and Richard Axtman (Axtman), violated Idaho Code § 18-9201 (False Imprisonment), Idaho Code § 18-905 (Aggravated Assault), and Idaho Code § 49-1406 (Failure to

¹ Under 28 U.S.C. § 2679(d)(2), the United States of America was, as a matter of law, substituted as the sole defendant in this case upon its removal from state court.

Take a Person without Unnecessary Delay before the Proper Magistrate). ECF No. 1-2 at 2 (Complaint).

The Acting United States Attorney for the District of Idaho has certified that Howard and Axtman “were acting within the scope of their employment and carrying out an Indian Self Determination and Education Assistance Act contract at the time of the incident out of which the Plaintiff’s claims arose.” ECF No. 1-46. Following this certification, the United States removed Plaintiff’s state court action to this Court pursuant to 28 U.S.C. § 2679(d)(2) and 28 C.F.R. § 15.4(a). *See* ECF No. 1 (Notice of Removal).

As explained in the United States’ Notice of Removal, Howard and Axtman are deemed federal employees for purposes of the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1346(b); 2671-2680, because they were acting within the scope of their employment in carrying out an Indian Self-Determination and Education Assistance Act (ISDEAA) contract when they participated in the traffic stop underlying Plaintiff’s claims. *See* ECF No. 1 at 2 (citing 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)). Accordingly, removal of this action from state court to this court was proper under 28 U.S.C. § 2671(d)(2).

The United States has filed a motion to dismiss Plaintiff’s complaint. ECF No. 5. Among other reasons, dismissal of this action is required because the United States has not waived sovereign immunity for intentional tort claims unless committed by for claims “arising out of assault, battery, false imprisonment, false arrest...[and] abuse of process” unless those torts are committed by “investigative or law enforcement officers of the United States,” 28 U.S.C. §2680(h). *See also* ECF No. 5-1 at 6-7. While Howard and Axtman are federal employees for purposes of the FTCA, they are not “investigative or law enforcement officers of the United States” under the FTCA.

Plaintiff has not filed an opposition to the United States’s Motion to Dismiss. Instead,

Plaintiff has filed a Motion for Denial of Removal (ECF No. 7), which seeks remand of this action to state court.

II. ARGUMENT

Plaintiff's motion should be denied because removal of this action from state court to this Court was proper under 28 U.S.C. § 2671(d)(2), which provides:

Upon certification by the Attorney General that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose, any civil action or proceeding commenced upon such 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.

Id. (emphasis added).

Here, the Attorney General's designee, Acting United States Attorney Justin D. Whatcott, has certified that Howard and Axtman were acting in the scope of their employment at the time of the incident out of which the claim arose. *See* ECF No. 1-46. This certification and the United States' removal of this action from state court to this Court both occurred prior to trial. Accordingly, removal of this action to federal court was both mandatory and proper under the FTCA.

Plaintiff's arguments to the contrary do not withstand scrutiny. First, Plaintiff argues that removal was not proper because neither Howard nor Axtman held a Special Law Enforcement Commission (SLEC) and they were not authorized to execute searches, seize evidence, or to make arrests for violations of federal law. *See* ECF No. 7 at 2. This argument fails because removal under 28 U.S.C. § 2671(d)(2) turns on whether Howard and Axtman were federal employees acting within the scope of their employment, not whether they happened to be employed as federal law enforcement officers. The fact that Howard and Axtman were not federal investigative or law enforcement officers of the United States is, however, dispositive of her intentional tort claims because the United States has not waived sovereign immunity for intentional tort claims unless

committed by for claims “arising out of assault, battery, false imprisonment, false arrest...[and] abuse of process” unless those torts are committed by “investigative or law enforcement officers of the United States,” 28 U.S.C. §2680(h). *See also* ECF No. 5-1 at 6-7.

Second, Plaintiff argues that “there is no qualified or sovereign immunity to commits act of torture . . .” and that Howard and Axtman violated international and natural law. *See* ECF No. 7 at 2-6. As an initial matter, Plaintiff’s Complaint does not allege a “torture” cause of action or violations of international or natural law. Rather, it alleges violations of Idaho Code § 18-9201 (False Imprisonment), Idaho Code § 18-905 (Aggravated Assault), and Idaho Code§ 49-1406 (Failure to Take a Person without Unnecessary Delay before the Proper Magistrate). ECF No. 1-2 at 2 (Complaint). Moreover, as noted above, whether removal under 28 U.S.C. § 2671(d)(2) was proper turns on whether Howard and Axtman were employees of the United States acting within the scope of their employment, not the distinct question of whether Plaintiff’s claims are barred by sovereign immunity.

III. CONCLUSION

For the foregoing reasons, the United States respectfully requests that the Court deny Plaintiff’s Motion for Denial of Removal, ECF No. 7.

DATED this 30th day of April 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 on April 30, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

N/A

And to the following non-CM/ECF participants via US Mail:

Margaret Baker
P.O. Box 893
Athol, Idaho 83801

/s/ *Duncan Brain*
DUNCAN BRAIN
Legal Assistant