

The Honorable Ronald B. Leighton

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

SHERRI BLACK,
Plaintiff,
v.
UNITED STATES OF AMERICA, et al.,
Defendants.

No. C13-5415-RBL
UNITED STATES’
MOTION TO DISMISS

NOTED FOR CONSIDERATION:
SEPTEMBER 13, 2013

I. INTRODUCTION

This lawsuit is based on a fatal shooting by a tribal police officer during the execution of a tribal arrest warrant upon a tribal member. Plaintiff’s complaint named the United States and its Department of Interior (“DOI”) and Bureau of Indian Affairs (“BIA”) as defendants, as well as the Port Gamble S’Klallam Tribe and its police department, the Suquamish Tribe and its police department, Port Gamble S’Klallam Detective Greg Graves, and numerous John Does. Plaintiff’s claims against the DOI and the BIA must be dismissed because a federal agency cannot be sued in its own name without authorization by Congress. Plaintiff’s claims against the United States must be dismissed because they are barred by the intentional tort exception to the Federal Tort Claims Act (“FTCA”).

II. FACTS

1
2 Plaintiff alleges that on December 8, 2011, police officers for the Port Gamble
3 S'Klallam and Suquamish Indian Tribes, along with deputies from the Kitsap County
4 Sheriff's Office, went to the home of Thomas Black to serve a misdemeanor arrest
5 warrant on Stacy Callihoo. *See* Dkt. No. 1, at pg. 4. Plaintiff, Mr. Black's sister, lived
6 with him at the time of the incident. *Id.* She alleges that she opened the door to police
7 officers and they ordered her out of her home and entered the residence. *Id.* at pg. 4-5.
8 Plaintiff alleges that the officers pushed her to the ground causing her physical injury
9 and Detective Graves shot and killed Mr. Black. *Id.* at pg. 5. Plaintiff alleges that after
10 the shooting the officers exited the home and left Mr. Black "to bleed to death not
11 rendering any emergency assistance to him." *Id.* Plaintiff alleges that several hours
12 later officers captured and arrested Callihoo who was located inside the house. *Id.* at
13 pg. 6.

III. STANDARD OF REVIEW

14 A complaint must be dismissed under Federal Rule of Civil Procedure 12(b)(1)
15 if, considering the factual allegations in the light most favorable to the plaintiff, the
16 action: (1) does not arise under the Constitution, laws, or treaties of the United States,
17 or does not fall within one of the other enumerated categories of Article III, Section 2 of
18 the Constitution; (2) is not a case or controversy within the meaning of the Constitution;
19 or (3) is not one described by any jurisdictional statute. *Baker v. Carr*, 369 U.S. 186,
20 198 (1962); *D.G. Rung Indus., Inc. v. Tinnerman*, 626 F.Supp. 1062, 1063 (W.D.Wash.
21 1986); *see* 28 U.S.C. §§ 1331 (federal question jurisdiction) and 1346 (United States as
22 defendant). When considering a motion to dismiss pursuant to Rule 12(b)(1), the court
23 is not restricted to the face of the pleadings, but may review any evidence to resolve
24 factual disputes concerning the existence of jurisdiction. *McCarthy v. United States*,
25 850 F.2d 558, 560 (9th Cir. 1988). The burden is on the plaintiff, as the party asserting
26 jurisdiction, to prove that federal jurisdiction is proper. *McNutt v. General Motors*
27 *Acceptance Corp.*, 298 U.S. 178, 189 (1936).
28

IV. ARGUMENT

A. Plaintiff's Claims Against the DOI and the BIA are Barred by Sovereign Immunity.

Plaintiff named the DOI and the BIA as Defendants. *See* Dkt. No. 1, at pg. 1, 4. This Court lacks jurisdiction over the BIA and the DOI because a federal agency cannot be sued in its own name without authorization by Congress. 28 U.S.C. § 2679(a); *see also Gerritsen v. Consulado General de Mexico*, 989 F.2d 340, 343 (9th Cir. 1993). Congress has not authorized suits against the BIA or the DOI. *Gerritsen*, 989 F.2d at 343 & n.3. Therefore, all of Plaintiff's claims against the BIA and the DOI must be dismissed for lack of subject matter jurisdiction.

B. Plaintiff's Claims Against the United States are Barred by Sovereign Immunity.

In general, the federal government, as sovereign, is immune from suit. This immunity can only be waived by Congress, and any such waivers must be strictly construed. *United States v. Orleans*, 425 U.S. 807, 814 (1976). The FTCA is a limited waiver of sovereign immunity. 28 U.S.C. §§ 1346(b), 2671-2680. The FTCA provides that:

the district courts ... shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages ... for personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under 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).

Tribal law enforcement officers are considered employees of the BIA for FTCA purposes when tribal law enforcement functions are funded and performed pursuant to an Indian Self-Determination Education Assistance Act ("ISDEAA") contract (also known as a 638 contract because it is authorized by Pub.L. 93-638) as authorized by 25 U.S.C. § 450f. A November 5, 1990, amendment to that Act provides:

1 With respect to claims resulting from the performance of functions ... under a
2 contract, grant agreement, or cooperative agreement authorized by the Indian
3 Self-Determination and Education Assistance Act ... an Indian tribe, tribal
4 organization or Indian contractor is deemed hereafter to be part of the Bureau of
5 Indian Affairs in the Department of the Interior ... while carrying out any such
6 contract or agreement and its employees are deemed employees of the Bureau ...
7 while acting within the scope of their employment in carrying out the contract or
8 agreement: Provided, that after September 30, 1990, any civil action or
9 proceeding involving such claims brought hereafter against any tribe, tribal
10 organization, Indian contractor or tribal employee covered by this provision shall
11 be deemed to be an action against the United States and will be defended by the
12 Attorney General and be afforded the full protection and coverage of the Federal
13 Tort Claims Act ...

14 Pub.L. No. 101-512, Title III, § 314, 104 Stat.1915, 1959 (codified at 25 U.S.C.
15 § 450f notes).

16 Here, the Port Gamble S’Klallam tribe entered into a Compact of Self-
17 Governance with the United States under Public Law No. 100-472 and pursuant to Title
18 III of the ISDEAA. Under this Compact, the United States funded the tribe’s
19 department of public safety, which includes the tribe’s police department. The Compact
20 was in existence on December 8, 2011, the date of the incident in the complaint. As
21 such, Detective Graves, a detective in the Port Gamble tribe’s police department, is a
22 deemed employee of the BIA and all common law tort claims alleged to have been
23 based on his conduct shall be brought against the United States pursuant to the FTCA.
24 The common law tort claims in this case pertaining to Detective Graves’ conduct are all
25 based on the alleged use of excessive force during the December 8, 2011 shooting.¹

26 Although Pub.L. 101–512 extends FTCA liability for tribal employees acting
27 pursuant to 638 contracts, that extension includes all of the exceptions to liability
28 described in the FTCA. Of particular relevance here, in Section 2680(h) of the FTCA,

¹ Plaintiff’s complaint also asserts various constitutional claims. *See* Dkt. No. 1 at pg. 8-10. The United States has not waived sovereign immunity in Civil Rights Actions or for constitutional claims. *See generally, FDIC v. Meyer*, 510 U.S. 471 (1994); *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). The United States did not substitute itself for any constitutional claims against any of the defendants, nor does the United States represent any of the defendants for any alleged constitutional violations.

1 Congress carved out an exception to the government’s waiver of sovereign immunity.
2 Section 2680(h) provides that the Act shall not apply to “[a]ny claim arising out of
3 assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of
4 process, libel, slander, misrepresentation, deceit, or interference with contract rights.”
5 28 U.S.C. § 2680(h). Each exception to the FTCA must be strictly construed in favor of
6 the United States. *Saraw Partnership v. United States*, 67 F.3d 567, 569 (5th Cir.
7 1995); *Sheehan v. United States*, 896 F.2d 1168, 1170 (1990) (“[there] is no justification
8 for this Court [or any court] to read exemptions into the [Federal Tort Claims] Act
9 beyond those provided by Congress.”)

10 There is also an “exception to the exception.” *Tekle v. United States*, 511 F.3d
11 839, 851 n.9 (9th Cir. 2007). The FTCA does not bar a claim against the United States
12 for intentional torts such as assault and battery where the perpetrator is a federal
13 investigative or law enforcement officer. Thus, under the intentional torts exception to
14 the FTCA, the general waiver of sovereign immunity effected by the Act only extends
15 to suits for intentional torts such as “assault [and] battery, false imprisonment, false
16 arrest, malicious prosecution, [and] abuse of process” if the conduct of “investigative or
17 law enforcement officers of the United States Government” is involved. 28 U.S.C. §
18 2680(h). If an intentional tort is committed by one who is not an investigative or law
19 enforcement officer, then sovereign immunity is not waived.

20 An “investigative or law enforcement officer” is defined as “any officer of the
21 United States who is empowered by law to execute searches, to seize evidence, or to
22 make arrests for violations of Federal law.” 28 U.S.C. § 2680(h). A tribal police officer
23 is not a “federal law enforcement officer” for purposes of the FTCA unless the officer
24 was commissioned by the Secretary of the Interior with a Special Law Enforcement
25 Commission (“SLEC”) under the Indian Law Enforcement Reform Act, 25 U.S.C. §
26 2804, and was enforcing federal law at the time.

27 This rule was first announced by the Tenth Circuit in *Dry v. United States*, 235
28 F.3d 1249 (10th Cir. 2000). In *Dry*, Choctaw Nation Tribal officers arrested Native
Americans on Choctaw land and charged them with numerous offenses in tribal court.

1 *Id.* at 1251. The Tenth Circuit held that because the tribal defendants were acting under
2 authority inherent to the Tribe’s sovereignty (i.e., enforcing tribal criminal laws against
3 tribal members) they were not investigative or law enforcement officers for purposes of
4 the FTCA. *Id.* at 1258.

5 After *Dry*, several district courts reached the same result and excluded tribal
6 officers who did not have an SLEC from the definition of federal law enforcement
7 officers for purposes of the FTCA. In *Locke v. United States*, 215 F.Supp.2d 1033
8 (D.S.D. 2002), *aff’d*, *Locke v. United States*, 63 Fed.Appx. 971 (8th Cir. 2003), the
9 plaintiff brought an FTCA action against the government for an assault committed by a
10 tribal police officer. *Id.* at 1035–36. The government admitted that the tribal officer
11 committed the assault, admitted that he was employed under a 638 contract, and that he
12 committed the assault during the course and scope of his employment. *Id.* at 1036.
13 However, the government moved to dismiss for lack of subject matter jurisdiction,
14 arguing that Section 2680(h) excluded the tort of assault from coverage under the FTCA
15 unless the officer was a federal law enforcement officer. *Id.* The government asserted
16 that the officer was not a federal law enforcement officer, a fact the plaintiff did not
17 contravene. *Id.* at 1036, 1038. The district court concluded that despite federal funding
18 of the tribe under a 638 contract, the tribal officer was not a “federal law enforcement
19 officer” for purposes of the FTCA. *Id.*

20 In *Trujillo v. United States*, 313 F.Supp.2d 1146 (D.N.M. 2003), the plaintiffs
21 filed an FTCA claim, alleging that three Isleta Tribal officers physically attacked and
22 beat Trujillo during his arrest. Despite the existence of a 638 contract with the BIA, the
23 district court concluded that the tribal officers were not “law enforcement officers” of
24 the United States for purposes of the FTCA. *Id.* at 1151. The district court noted that
25 “[n]othing in the ISDEAA, or in relevant case law, suggests that the mere existence of a
26 Public Law 93-638 contract between BIA and a tribe for the provision of law
27 enforcement services automatically confers federal law enforcement authority upon the
28 officers in tribal police departments.” *Id.* The court further determined that “[a]bsent
the power to enforce federal law, tribal officers are not federal investigative or law

1 enforcement officers.” *Id.* To determine whether the tribal officers were United States
2 law enforcement officers for purposes of the FTCA, the court noted that the answer
3 depended on “the particular contract under which the services are carried out.” *Id.* In
4 particular, the court observed that under the 638 contract, only tribal officers who
5 received SLECs could assist the BIA in enforcing applicable federal criminal statutes
6 and that none of the tribal defendants had received such commissions. *Id.* at 1151.

7 Next, in *Vallo v. United States*, 298 F.Supp.2d 1231 (D.N.M. 2003), the plaintiff
8 filed an FTCA claim alleging that a detention officer sexually assaulted and battered her
9 while she was incarcerated at the Laguna Pueblo Corrections Center. *Id.* at 1232-33.
10 The United States admitted that the corrections officer was a federal employee for
11 purposes of the FTCA, but argued that he was not an investigative or law enforcement
12 officer under the FTCA’s intentional tort exception. *Id.* at 1237. The United States
13 presented evidence that BIA did not issue an SLEC to the corrections officer, which
14 would have authorized him to enforce federal law. *Id.* Thus, the United States argued
15 that because the corrections officer did not meet the statutory definition of
16 “investigative or law enforcement officer,” the United States is immune from suit for a
17 claim arising out of alleged assault and battery by the corrections officer. *Id.* The court
18 agreed and found that *Dry* compelled dismissal of the assault and battery claim. *Id.* at
19 1235-38. The court further found that any intentional infliction of emotional distress
20 claim would also be barred because it arose out of the alleged assault and battery. *Id.*

21 Similarly, in *LaVallie v. United States*, 396 F.Supp.2d 1082 (D.N.D. 2005), the
22 plaintiff filed an FTCA claim alleging that a tribal officer used excessive force when
23 arresting the plaintiff. *Id.* at 1083. The Tribe had a 638 contract with the BIA, which
24 the district court did not find sufficient. *Id.* at 1085. In fact, the United States
25 acknowledged that tribal officers and the BIA worked closely together and that the BIA
26 even provided “direct supervision” for tribal officers who were trained at the BIA Police
27 Academy. *Id.* at 1086. But at the time of the alleged assault, the tribal officer was
28 attempting to enforce tribal law and the plaintiff was ultimately arrested and charged
with a variety of tribal offenses. *Id.* As a result, the district court concluded that the

1 tribal officer was acting as a tribal police officer and did not qualify as a federal officer
2 under the FTCA. *Id.*

3 In 2006, the Fifth Circuit held that tribal police that were not employed as BIA
4 law enforcement officers or special agents, and who were not acting with any SLEC, or
5 enforcing federal law, could not be considered “investigative or law enforcement
6 officers of the United States government” for purposes of the FTCA. *See Hebert v.*
7 *United States*, 438 F.3d 483 (5th Cir. 2006). In *Hebert*, a tribal police officer responded
8 to a domestic dispute between two non-Indians at a casino on tribal land. *Id.* at 484.
9 The plaintiff, a non-Indian, failed to comply with the officer’s instruction and a
10 confrontation occurred that resulted in the plaintiff being injured. *Id.* The Tribe had a
11 638 contract with the BIA. In fact, in *Hebert*, unlike the present case, the BIA had
12 signed a Deputation Agreement with the Chitimacha Police Department in which the
13 BIA agreed to and did issue an SLEC to one of the tribal defendants, cross-deputizing
14 him as a BIA law enforcement officer. *Id.* at 483. Nonetheless, the Fifth Circuit
15 concluded that neither the cross-deputized officer nor his chief acted within the scope of
16 federal employment in order for FTCA coverage to attach to the plaintiff’s FTCA claim
17 because neither “were employed as Bureau of Indian Affairs law enforcement officers
18 or special agents, nor were they acting in accordance with any special commission to
19 assist the Bureau of Indian Affairs with providing law enforcement services.” *Id.* at
20 487. In sum, the record failed to show that the defendants were actually enforcing
21 federal law when they arrested the plaintiff. *Id.* As a result, the Fifth Circuit held that
22 the tribal officers were not acting under the color of federal law, could not be considered
23 “investigative or law enforcement officers of the United States government” for
24 purposes of the FTCA, and the United States had not waived sovereign immunity to be
25 sued for indemnification under the FTCA for the plaintiff’s assault and battery claim.
Id.

26 Since then, numerous district courts, including courts in the Ninth Circuit, have
27 continued to apply the *Dry* and *Hebert* decisions to reach the same result. In *Washakie*
28 *v. United States*, 2006 WL 2938854 (D.Idaho, Oct. 13, 2006), the plaintiff filed an

1 FTCA suit alleging that he was assaulted while in the Fort Hall Jail by officers of the
2 Fort Hall Police Department. Relying upon *Dry* and *Hebert*, the court used a two-part
3 legal analysis to evaluate whether a tribal officer constitutes a federal law enforcement
4 officer under the FTCA: “First, a tribal police officer must be certified as a federal law
5 enforcement officer for that officer to come under § 2680(h). Second, the tribal officer
6 must have acted under color of federal law at the time of the alleged tort.” *Id.* at *4.
7 Because the evidence demonstrated that the tribal officers had not been certified by the
8 BIA, the district court held that they were not “investigative or law enforcement officers
9 of the United States Government” under 28 U.S.C.
10 § 2680(h). *Id.*

11 Similarly, in *Johnson v. United States*, 2007 WL 2688556 (D.S.D., Sept. 11,
12 2007), the plaintiff filed an FTCA claim alleging that he was assaulted during his arrest
13 by a tribal police officer. The United States submitted evidence showing that tribal
14 police officers were not authorized to make arrests for violations of federal law, to
15 execute searches, or to seize evidence, and that they were not considered qualified to
16 receive SLEO commission cards. *Id.* at *3. The court found that the tribal police
17 officer was not an investigative or law enforcement officer, and that the United States
18 was not liable as a matter of law for his alleged intentional torts in this action. *Id.* The
19 court further found that the tribal officer’s alleged assault of the plaintiff was essential
20 to the plaintiff’s claim for failure to secure timely medical care, and the claim “arises
21 out” of assault and is subject to the provisions of § 2680(h).

22 In *Bob v. United States*, 2008 WL 818499, at *1 (D.S.D. Mar. 26, 2008), the
23 plaintiff filed an FTCA claim alleging that police officers of the Oglala Sioux Tribe
24 came to his home, entered without a warrant, probable cause, or invitation, and used
25 excessive force against him, twisting his arm, slamming him against the wall, and
26 breaking his glasses. The tribe’s law enforcement was funded pursuant to a 638
27 contract, but none of the officers involved had an SLEC. *Id.* at *2. The court held that
28 even though tribal defendants may be considered federal employees under the FTCA,
they were not federal “investigative or law enforcement officers” in light of

1 government's affidavit stating that none of the tribal officers involved in the disputed
2 incident held an SLEC from the BIA. *Id.*

3 Similarly, in *Boney v. Valline*, 597 F.Supp.2d 1167 (D.Nev., Jan. 22, 2009), a
4 Walker River tribal police officer employed deadly force after responding to a call
5 involving a family the officer had had several encounters with. *Id.* at 1169-70. The
6 court found that although Congress amended ISDEAA to allow recovery under the
7 FTCA for certain claims arising out of performance of self-determination contracts,
8 courts have held that the qualification of a tribal employee as a federal employee or
9 actor under the FTCA is limited. Following the Tenth Circuit's ruling in *Dry*, the court
10 held that a tribal officer is only considered to be a federal employee for FTCA purposes
11 while acting under authority granted by the Secretary of the Interior and a tribal officer
12 is not acting in such capacity when he is enforcing tribal (not federal) law and is doing
13 so without having received a SLEC from the BIA. *Id.* at 1181.

14 In *Williams v. Naswood*, 2011 WL 867520 (D.Ariz., Mar. 14, 2011), the parties
15 agreed that a tribal police officer is not a "federal law enforcement officer" for purposes
16 of the FTCA unless the officer was commissioned by the Secretary of the Interior with
17 an SLEC. *Id.* at *1. The United States submitted a declaration from the special agent in
18 charge of issuing SLEC's on behalf of the BIA, attesting that the tribal officer involved
19 in the case did not have an SLEC at the time of the incident and was not authorized to
20 execute searches, to seize evidence, or to make arrests for violations of federal law. *Id.*
21 The court held that because the officer did not hold an SLEC at the time of the incident,
22 he was not a federal law enforcement officer within the meaning of the FTCA. *Id.*

23 Courts have also rejected invitations to invalidate the *Dry* and *Locke* decisions.
24 In *Buxton v. United States*, 2011 WL 4528337 (D.S.D. Apr. 1, 2011), the plaintiffs
25 argued that the *Dry* and *Locke* decisions were wrongly decided. The court rejected this
26 argument stating:

27 The [plaintiffs] have failed to cite to a single case, in this circuit or any other, that
28 has interpreted Pub.L. 101-512 to create FTCA liability for the government for
all acts of tribal employees acting pursuant to 638 contracts, and that the
exceptions and immunities described by the FTCA are inapplicable in such cases.

1 This court is convinced that the plethora of cases cited above have not analyzed
2 the issue incorrectly. Although Pub.L. 101–512 extends FTCA liability for tribal
3 employees acting pursuant to 638 contracts, that extension includes all the
4 exceptions to liability described in the FTCA, including that exception found at §
2680(h).

5 *Id.* at *10 (internal citations omitted).

6 The *Dry* and *Locke* decisions were recently applied in *Henderson v. United*
7 *States*, 2012 WL 4498871 (D.N.M., Sept. 19, 2012). There, the court dismissed an
8 FTCA claim based on a pursuit by Navajo police officers that ended with the officers
9 fatally shooting the driver because it arose out of assault and battery and because the
10 officers were not investigative or law enforcement officers of the United States
11 government, and under the intentional tort exception, the United States is immune from
12 suit. The court held that federal regulations make clear that “[t]ribal law enforcement
13 officers operating under a BIA contract [such as the one here] are not automatically
14 commissioned as Federal officers; however, they may be commissioned on a case-by-
15 case basis.” *Id.* (citing 25 C.F.R. § 12.21(b)). The court found that although “the BIA
16 is authorized to delegate the responsibility of enforcing federal law on Indian lands to
17 tribal police, ... to do so, the BIA must approve and issue federal commissions called
18 ‘special law enforcement commissions’ or ‘SLEC’s’ to individual tribal officers
19 determined to be qualified on a case-by-case basis.” *Id.* (citing *Boney*, 597 F.Supp.2d at
20 1177). The complaint did not allege that the officers were commissioned as federal
21 officers, and the undisputed evidence demonstrated that the BIA did not issue SLEC
22 cards to the officers at any time. Thus, the court held that regardless of whether the
23 officers were federal employees for purposes of Section 2680(h), they were neither
24 commissioned as federal officers nor acting to enforce federal law when they pursued
25 and shot the plaintiff. *Id.* As such, the officers were not federal investigative or law
26 enforcement officers, and the intentional tort exception applied. *Id.* (citing *Dry*, 235
27 F.3d at 1258; *Locke*, 215 F.Supp.2d at 1038–39); *see also Dupris v. McDonald*, 2012
28 WL 210722, *13 (D.Ariz., Jan. 24, 2012) (tribal officers who were not given SLECs
from the BIA, deputized by the BIA, or otherwise authorized to make arrests under

1 federal law, were not federal law enforcement officers or investigators under Section
2 2680(h)).

3 Here, the complaint does not allege that Detective Graves was commissioned as
4 a federal law enforcement officer or that he had received an SLEC from the BIA. *See*
5 Dkt. No. 1. Indeed no SLEC has been issued to Detective Graves. *See* Declaration of
6 Thomas Woolworth (“Woolworth Decl.”) filed concurrently herewith. Special Agent in
7 Charge Woolworth has testified that the BIA only issues a tribal law enforcement
8 officer an SLEC if and when: (1) the employing tribe has submitted a Tribal resolution
9 supporting the participation of its law enforcement program in the SLEC program; (2)
10 the employing tribe has signed a Deputation Agreement with the BIA; (3) the tribal
11 officer has completed an SLEC application; (4) the tribal officer has provided the BIA
12 with a background examination that the BIA has adjudicated; and (5) the tribal officer
13 has completed the training component, Criminal Jurisdiction in Indian Country. *Id.* at
14 ¶4. All items must be completed before an SLEC card can be issued. *Id.* Special Agent
15 in Charge Woolworth further testified, “Detective Greg Graves of the Port Gamble
16 Tribal Police Department does not and did not, on December 8, 2011, have an SLEC.”
17 *Id.* at ¶5. Additionally, Detective Graves was enforcing the Tribe’s laws against one of
18 the Tribe’s members and was not enforcing federal law at the time of the incident.

19 Thus, Detective Graves did not qualify as an investigative or law enforcement
20 officer of the United States Government under 28 U.S.C. § 2680(h). As such, Plaintiff’s
21 tort claims against the United States, which all arose out of the assault and battery on
22 Mr. Black, are all barred by the intentional tort exception to the FTCA and this Court
23 lacks jurisdiction over these claims.

24 //

25 //

V. CONCLUSION

WHEREFORE for the reasons set forth above, the United States respectfully requests that the Court issue an Order dismissing all claims against the DOI and the BIA as well as all claims against the United States.

Dated this 21st day of August, 2013.

Respectfully submitted,
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Western District of Washington and is a person of such age and discretion as to be competent to serve papers;

It is further certified that on August 21, 2013, 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 CM/ECF participant(s):

- Thomas S. Olmstead Tom@tomolmstead.com
- James Rittenhouse Bellis Rbellis@suquamish.Nsn.us
- Ann Crary McCormick Amccormick@forsberg-umlauf.com

I further certify that on August 21, 2013, I mailed by United States Postal Service the foregoing to the following non-CM/ECF participant(s)/CM/ECF participant(s), addressed as follows:

-0-

Dated this 21st day of August, 2013.

s/ Tiffany Gallegos
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