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**UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA
BILLINGS DIVISION**

| | | |
|---------------------------|---|------------------|
| PATSY FERCHO, |) | |
| |) | Case No. _____ |
| Plaintiff, |) | |
| |) | COMPLAINT |
| v. |) | |
| |) | |
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Defendant. |) | |
| |) | |

PRELIMINARY STATEMENT

1. This is an action filed under the Federal Tort Claims Act (FTCA) arising from a jurisdictional conflict between the Northern Cheyenne Tribal Court (hereinafter, the “Tribal Court”) and a family court referee in Minnesota concerning two young boys – a conflict that was “resolved” when agents from the Bureau of Indian Affairs (BIA) seized the boys by using an invalid Minnesota warrant to arrest their grandmother while she and the boys were in Montana.

2. In September 2015, the Tribal Court awarded custody of E.L. (who was eight-years old) and L.L. (who was five-years old) to their grandmother, Plaintiff Patsy Fercho.

3. The birth father – an alcoholic who had subjected the boys and their birth mother to years of physical and psychological abuse – did not show up for the custody hearing. The birth mother was suffering from substance abuse issues at that time and was not able to care for the boys.

4. In October 2015, a Minnesota family court referee purported to annul the Tribal Court's order and awarded custody of the boys to the birth father.

5. Fearing that state authorities would illegally seize the boys, Mrs. Fercho brought them to the Northern Cheyenne Indian Reservation.

6. Sure enough, a Montana prosecutor filed false felony charges against Mrs. Fercho for custodial interference, despite Mrs. Fercho having a valid Tribal Court order granting her guardianship over the boys.

7. A Montana court dismissed all charges a week later, but Mrs. Fercho and her grandsons remained on the reservation out of fear that officials would manufacture some other pretext to arrest her.

8. The Tribal Court stood by its ruling and the Tribe gave Mrs. Fercho its full support. The birth father could have appealed the Tribal Court's order. Instead, the birth father, his Minnesota attorney, and BIA agents chose a different

route. They demanded that Tribal officials surrender the boys to the birth father. When that failed, they persuaded a Minnesota judge to issue a warrant on November 20, 2015, for Mrs. Fercho's arrest for failure to appear at a hearing in Minnesota. The Minnesota attorney immediately emailed a copy of the warrant to a BIA agent on the reservation in Montana, who arranged to have the birth father travel to the reservation. The warrant was never approved by a Montana court as required by law.

9. The following day, BIA agents raided a church attended by Mrs. Fercho and her grandsons. In front of the pastor, his wife, and Mrs. Fercho's elderly mother, a male BIA agent used the invalid Minnesota warrant to arrest Mrs. Fercho and told her that she would be taken to Hardin, Montana, and handed over to Minnesota authorities. A female BIA agent then handcuffed Ms. Fercho and drove her away from the church while the male agent seized the boys and brought them to their birth father in violation of the Tribal Court order. An hour later, the female BIA agent returned Mrs. Fercho to the church and released her. Mrs. Fercho was never taken to Hardin. She has not seen her grandsons since that day.

10. The BIA agents illegally executed an invalid Minnesota warrant as a pretext to seize Ms. Fercho's grandsons and did so to circumvent the Tribal Court's order granting her custody of the boys. The BIA's actions were an affront to the Tribal Court.

11. Not satisfied with illegally seizing the boys and Mrs. Fercho, the male BIA agent continued terrorizing Mrs. Fercho for months thereafter until she left the reservation and returned to her home in Glendive, Montana, in May 2016.

12. As a result, Mrs. Fercho has suffered damages, including severe emotional distress. Under the FTCA, the Government bears responsibility for its agents' use of their badges and guns to kidnap a grandmother who was trying to protect her grandsons and is liable for false imprisonment as well as abuse of process.

JURISDICTION AND VENUE

13. The FTCA waives the sovereign immunity of the United States and permits a plaintiff to bring a civil action against the Government to recover monetary damages for the torts of federal employees and persons acting on behalf of a federal agency of the United States. 28 U.S.C. § 2671.

14. Under the FTCA, the United States is liable "in the same manner and to the same extent as a private individual under like circumstances" for the commission of torts. 28 U.S.C. § 2674.

15. In assessing tort claims under the FTCA, federal courts apply state law. 28 U.S.C. § 2674; *United States v. Olson*, 546 U.S. 43, 44, 46 (2005).

16. This Court has jurisdiction over Mrs. Fercho's FTCA claims under 28 U.S.C. §1346(b) and 28 U.S.C. § 2671, *et seq.*

17. Pursuant to 28 U.S.C. § 2401(b), Mrs. Fercho timely presented a claim to the United States Department of the Interior (DOI) on November 16, 2017, which was within two years of the accrual date of November 21, 2015.

18. The DOI had until May 16, 2018, to rule upon Mrs. Fercho's claim but failed to do so.

19. This failure constituted a "final denial" of Mrs. Fercho's administrative claim under 28 U.S.C. § 2675(a).

20. This action is timely filed under 28 U.S.C. § 2401(b).

21. Venue for this action properly lies in the Billings Division of the District of Montana because events giving rise to this action occurred within the Billings Division.

PARTIES

22. Plaintiff Patsy Fercho is, and at all times pertinent to this action has been, a resident of Dawson County in the State of Montana.

23. Defendant United States of America is liable for tortious acts committed by DOI agents, including agents assigned to the BIA, when those acts are performed within the course and scope of employment. 28 U.S.C. §§ 2671, 2671.

STATEMENT OF FACTS

1. Mrs. Fercho's Care and Protection of E.L. and L.L.

24. Plaintiff Patsy Fercho is a 64-year old grandmother residing in Glendive, Montana, with Allen Fercho, her husband of 46 years.

25. In 1988, the Ferchos adopted a baby girl whose birth mother was a member of the Northern Cheyenne Tribe.

26. The Ferchos' adopted daughter was diagnosed with Fetal Alcohol Syndrome and has battled drug and alcohol addiction throughout her life.

27. E.L. was born to the Ferchos' daughter in 2007 while she was in a rehabilitation facility in North Dakota.

28. The birth father, who was not present at the time of the birth, is an alcoholic and has been convicted of multiple DUIs and other driving-related violations.

29. Mrs. Fercho traveled from Montana to North Dakota every other weekend in order to spend time with E.L. and often took him on overnight stays.

30. The birth father did not provide any financial support for either the birth mother or E.L.

31. After the birth mother completed a rehabilitation program in April 2008, she and E.L. moved to Minnesota and began living with the birth father in his mobile home.

32. The birth father drank heavily nearly every night until he passed out.

33. He subjected the birth mother to severe mental and physical abuse during the time they lived together and threatened to kill her on multiple occasions. He routinely destroyed her cell phones in order to obstruct her ability to seek help.

34. The birth father was convicted in May 2009 of his third DUI offense.

35. A few months later in August 2009, the birth mother called her brother, Troy Fercho, at approximately 1 a.m. and asked him to come to the mobile home.

36. Troy Fercho lived nearby and responded.

37. When he arrived, he observed furniture tipped over and the birth father in a state of intoxication.

38. He also observed hand marks on his sister's arms.

39. The birth mother and E.L. left with Troy Fercho and remained away from the birth father for a week, then moved back to the birth father's mobile home.

40. In November 2009, Troy Fercho again received an early morning, panic-stricken phone call from his sister.

41. He could hear the birth father yelling in the background during the call.

42. Troy Fercho had a friend accompany him to the mobile home in order to rescue E.L and his mother, once again, from the birth father.

43. When they arrived, Mr. Fercho could hear, while standing outside the mobile home, E.L. crying loudly from inside.

44. When he entered the mobile home, he noticed an odor of alcohol and the birth father passed out on the floor.

45. He also noticed a bruise on his sister's eye and marks on her neck.

46. Troy Fercho again took his sister and E.L. to his home, where they resided for the next two months before again returning to the mobile home.

47. In February 2010, shortly after the birth mother and E.L. returned to the mobile home, the birth father assaulted them.

48. He slapped E.L. in the face even though E.L. was a toddler at the time.

49. He also sat on the birth mother (who was pregnant at the time with L.L.) by putting his knees on her stomach and punched her multiple times in the face.

50. He then threatened to kill her by cutting her up and hiding her body parts underneath the mobile home.

51. The birth mother responded by taking E.L and fleeing to a domestic violence shelter.

52. Shortly thereafter, Allen and Patsy Fercho arrived at the shelter and took their daughter and E.L. back to their home in Glendive, Montana.

53. About a month later, the birth mother obtained her own apartment in Glendive.

54. Patsy and Allen Fercho spent considerable time with E.L. when their daughter was not at the apartment and often took him to their home where he would spend the night.

55. The Ferchos' daughter gave birth to another son, L.L., in 2010.

56. The birth father traveled to Glendive and attended a barbeque at the Ferchos in celebration of July 4.

57. During the barbeque, the Ferchos and others observed the birth father smack E.L. in the head, grab his arm, and call him a "fucking retard."

58. After L.L.'s birth, the birth mother again became enmeshed in addiction issues and soon moved back to her parents' house.

59. Patsy and Allen Fercho subsequently resumed full-time care of E.L. and L.L.

60. In late December 2012, the birth father took the boys to Minnesota during the holidays on the condition that he not drink.

61. A couple weeks later when he returned the boys to the Ferchos, E.L. told the Ferchos that the birth father had a drinking party at his home in which he and other family members encouraged E.L. to drink “yucky beer.”

62. For the next couple of years, the birth father repeatedly drank to excess.

63. The birth mother continued to suffer severe addiction problems and was unable to care for the boys.

64. In December 2014, the birth father inexplicably received custody of the boys over the Ferchos’ objection and the objection of the boys’ guardian ad litem.

2. The Tribal Court Grants Mrs. Fercho Guardianship of E.L. and L.L.

65. On or about June 1, 2015, Patsy and Allen Fercho filed a petition in the Third Judicial District in Olmstead County, Minnesota (hereinafter referred to as the “Minnesota Court”) seeking to establish visitation rights concerning E.L. and L.L.

66. On June 4, 2015, Mrs. Fercho filed a petition in the Tribal Court seeking custody and/or visitation rights concerning E.L. and L.L.

67. The Tribal Court issued an order later that day granting Mrs. Fercho emergency guardianship over the boys and set a hearing for September 2015.

68. The Tribal Court modified its order on August 31, 2015, to include physical custody of the boys along with emergency guardianship.

69. On September 16, 2015, sheriff's deputies in Minnesota rescued the boys and returned them to the Ferchos on the following day.

70. The birth father failed to appear in the Tribal Court and, as a result, the Tribal Court entered an order on September 17, 2015, declaring the birth father in default and granting permanent guardianship and physical custody of E.L. and L.L. to Mrs. Fercho.

71. Both boys subsequently revealed that the birth father had physically abused them and drank continuously.

72. In early October 2015, Mrs. Fercho feared that she would be subject to an illegal arrest and seizure of her grandsons.

73. She therefore sought refuge at the Circle of Life Lutheran Church near Lame Deer, Montana, within the boundaries of the Northern Cheyenne Indian Reservation.

74. The pastor of the Church, Dennis Bauer, let Mrs. Fercho and the boys put their camper next to the church and gave them use of the church's kitchen, bathroom, and laundry facilities.

75. Mrs. Fercho home schooled the boys under the supervision of Carol Bauer, a licensed teacher and the wife of Pastor Bauer.

76. On October 7, 2015, Montana prosecutors filed felony custodial interference charges against Mrs. Fercho.

77. The Montana Seventh Judicial District Court in Glendive, Montana, issued an arrest warrant that same day with bail set at \$25,000.

78. On October 12, the Minnesota court issued an order holding that the Tribal Court lacked jurisdiction to issue its guardianship order, awarded temporary custody of the boys to the birth father, and ordered E.L. and L.L. to be returned to the birth father.

79. On October 13, 2015, the Montana court in Glendive dismissed all charges against Mrs. Fercho.

80. On October 15, 2015, a Minnesota prosecutor informed Jenny Nelson, the birth father's Minnesota attorney, that the boys "were taken [to Montana] pursuant to a valid order...from the Tribal Court," and thus, "since the kids were taken to Montana pursuant to a then valid order, I don't think we can ever have jurisdiction to charge persons in Montana with violating the Minnesota order...."

81. The Minnesota prosecutor also told Nelson that "We cannot apply for a search warrant here and expect the FBI in another state to use it to grab the kids," and that "we cannot in good faith charge the suspects criminally here and get an arrest warrant for the FBI to use in Montana."

82. That same day, Nelson emailed to Roberta Cross Guns, a Montana attorney representing Mrs. Fercho, a demand that Mrs. Fercho bring the boys to a Montana sheriff or a social worker.

83. Nelson threatened to “proceed as necessary” if Mrs. Fercho refused.

84. Nelson contacted Northern Cheyenne Tribal officials on October 20, 2015 and transmitted the order issued by the Minnesota Court.

85. The Tribal Court refused to modify its order granting Mrs. Fercho guardianship of the boys.

86. On October 20, 2015, Nelson filed a motion in the Minnesota court to have Mrs. Fercho held in contempt.

87. In October 2015, BIA Agent Donovan Wind began stalking Mrs. Fercho by driving to the church two to three times a week – each time spending several minutes staring at Mrs. Fercho and the boys before departing.

88. On November 20, 2015, the Minnesota court issued a warrant for Mrs. Fercho’s arrest for failure to appear in court.

89. Later in the day on November 20, Nelson emailed a copy of the Minnesota arrest warrant to Agent Wind, who then arranged to have the birth father come to the reservation.

3. Mrs. Fercho's Illegal Arrest by BIA Agents

90. Late in the afternoon on November 21, 2015, Mrs. Fercho was at the Circle of Life Lutheran Church with her grandsons.

91. Mrs. Fercho's elderly mother, Harriet Ames, was present as well.

92. Agent Wind arrived at the church in a marked BIA vehicle.

93. A female BIA agent arrived at the church shortly thereafter in another BIA vehicle.

94. Agent Wind told Mrs. Fercho that he had a warrant for her arrest and that he would take her to Hardin where she would be held until Minnesota officers arrived to take her to Minnesota.

95. The church's pastor, Dennis Bauer, and his wife, Carol Bauer, arrived at the church moments later.

96. When Mrs. Fercho asked Agent Wind for a copy of the warrant, he told her that it was in his vehicle.

97. After Mrs. Fercho made repeated requests to see the warrant, Agent Wind went to his vehicle, then returned with his cell phone, which he used to show Mrs. Fercho and Pastor Bauer an electronic copy of the Minnesota warrant.

98. Mrs. Fercho stated that she would not leave the church voluntarily.

99. Agent Wind threatened to use force against her if she resisted.

100. He also threatened to use force against Mrs. Ames.

101. Mrs. Fercho was so terrified she vomited.

102. L.L. began screaming and got on his knees in front of Agent Wind and begged him not to take L.L. back to the birth father.

103. The female BIA agent stated that she would take the boys to “Social Services.”

104. Moments later, however, Agent Wind put the boys in *his* vehicle, then left the church.

105. The female agent then handcuffed Mrs. Fercho, forced her into the other BIA vehicle, then drove her away from the church.

106. She continued driving around the reservation.

107. At one point, the female BIA officer turned onto a side road.

108. Mrs. Fercho was terrified and thought she was going to be murdered.

109. After approximately an hour, the female BIA agent returned Mrs. Fercho to the church and released her.

110. Mrs. Fercho and a friend arrived at the police station in Lane Deer shortly thereafter.

111. They confronted Agent Wind, who laughed and then admitted that he dropped the boys off with their father at the boundary of the reservation.

112. Agent Wind produced a paper copy of the Minnesota warrant to Mrs. Fercho and her friend.

113. He also claimed to have a warrant issued by a tribal judge, but refused to produce it.

114. Agent Wind continued harassing Mrs. Fercho for months after illegally arresting her on November 21, 2015.

115. Agent Wind told her that he could re-arrest her at any time.

116. He routinely parked his BIA vehicle on the church parking lot and stared into the camper Mrs. Fercho was using.

117. He followed Mrs. Fercho around Lame Deer on numerous occasions, pulled his vehicle beside hers, and on at least one occasion focused his vehicle's spotlight into the interior of her vehicle.

118. Mrs. Fercho was in constant fear of Agent Wind until she returned from the reservation to her home in Glendive in May 2016.

119. As a result of the outrageous acts committed against her by BIA agents, Mrs. Fercho has suffered damages including, but not limited to, humiliation, pain and suffering, and severe emotional distress.

CAUSES OF ACTION

FIRST CLAIM FOR RELIEF (False Imprisonment)

120. Mrs. Fercho realleges and incorporates by reference each allegation set forth above.

121. Under Montana law, the elements of a cause of action for false imprisonment are (1) the restraint of an individual against his or her will and (2) the unlawfulness of such restraint. *Hughes v. Pullman*, 36 P.3d 339, 343 (Mont. 2001), citing *Hardy v. LaBelle's Distributing Co.*, 661 P.2d 35, 37 (Mont. 1983).

122. Under Montana law, a valid arrest warrant must “be in writing in the name of the state of Montana or in the name of a municipality if a violation of a municipal ordinance is charged.” Mont. Code Ann. § 46-6-214.

123. On November 21, 2015, BIA agents restrained Mrs. Fercho by handcuffing her and forcing her into a BIA vehicle.

124. A BIA agent drove Mrs. Fercho around for over an hour and, at one point, turned onto a side road, before returning Mrs. Fercho to the church at Lame Deer.

125. The BIA agents’ restraint of Mrs. Fercho was unlawful.

126. The Minnesota warrant that BIA agents used to arrest Mrs. Fercho was not issued “in the name of the state of Montana” and could not be validly executed to arrest a Montana citizen who was present within the State of Montana.

127. The BIA agents falsely imprisoned Mrs. Fercho as a pretext to seize her grandsons in violation of the Tribal Court’s order.

128. Mrs. Fercho has suffered damages including, but not limited to, humiliation, pain and suffering, and emotional distress as a result of the outrageous

acts committed against her by BIA agents.

**SECOND CLAIM FOR RELIEF
(Abuse of Process)**

129. Mrs. Fercho realleges and incorporates by reference each allegation set forth above.

130. Under Montana law, an abuse of process occurs when a person has (1) an ulterior purpose and (2) commits a willful act in the use of process not proper in the regular conduct of the proceeding. *Seltzer v. Morton*, 154 P.3d 561, 580 (Mont. 2007), quoting *Brault v. Smith*, 679 P.2d 236, 240 (Mont. 1984). Stated differently, “an abuse of process entails an attempt by the plaintiff to use process to coerce the defendant to do some collateral thing which he could not be legally and regularly compelled to do.” *Id.*

131. The Tribal Court granted permanent guardianship and physical custody of E.L. and L.L. to Mrs. Fercho on September 17, 2015.

132. BIA agents used a Minnesota warrant to arrest Mrs. Fercho, a Montana citizen, at a time when she was legally present in the State of Montana.

133. The use of the Minnesota warrant to arrest Mrs. Fercho in Montana was unauthorized by both the Montana Uniform Criminal Extradition Act (Mont. Code Ann. § 46-30-201, *et seq.*) and the Minnesota Uniform Criminal Extradition Act (see, *e.g.*, Minn. Stat. § 629.23).

134. The BIA agents who used the Minnesota warrant to illegally arrest Mrs. Fercho did so for the ulterior purpose of seizing E.L. and L.L. and avoiding the process of seeking to modify or vacate the Tribal Court order granting guardianship of the boys to Mrs. Fercho.

135. Mrs. Fercho has suffered damages including, but not limited to, humiliation, pain and suffering, and severe emotional distress as a result of the outrageous acts committed against her by BIA agents.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Patsy Fercho respectfully requests the following relief from this Court:

a) Entry of judgment against the United States for the false imprisonment and abuse of process suffered by Mrs. Fercho as a result of the outrageous actions of the BIA agents;

b) An award of compensatory damages in the amount of \$1,000,000.00;

c) An award of Mrs. Fercho's costs, expenses, and attorneys fees in accordance with law;

d) Any other relief as this Court deems just and equitable.

DATED: May 23, 2018

Respectfully submitted,

/s/ Matthew G. Monforton

Matthew G. Monforton

Attorney for Plaintiff