

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

<p>ANITA BRAVE HEART, Administrator of the Estate of Jamie Brave Heart,  Plaintiff,  v.  UNITED STATES OF AMERICA,  Defendant.</p>	<p>CIV No. 18-5054-JLV  <b>ANSWER</b></p>
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COMES NOW the Defendant, the United States of America, by and through its attorneys, Ronald A. Parsons, Jr., United States Attorney for the District of South Dakota, and SaraBeth Donovan, Assistant United States Attorney, and respectfully answers the Plaintiff's Complaint as follows. All allegations contained in the Complaint, including relief sought, are denied except when specifically admitted or qualified herein. Answering specifically each paragraph of the Complaint, using the same numbering used in the Complaint, the Defendant answers as follows:

1. The Defendant is without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 1. To the extent an answer is required, the allegations are denied.
2. The Defendant admits the allegations contained in paragraph 2.
3. Paragraph 3 contains the Plaintiff's jurisdictional statement for which no response is required. To the extent a response is

deemed required, the Defendant admits that the Plaintiff has attempted to assert a claim under the Federal Tort Claims Act (FTCA).

4. Regarding the allegations contained in Paragraph 4, the Defendant admits that on June 3, 2016, the Department of the Interior, Bureau of Indian Affairs, contracted with the Oglala Sioux Tribe pursuant to the Indian Self Determination Act for the purpose of providing law enforcement and related services on the Pine Ridge Indian Reservation. The Defendant denies any further allegations or implications contained in Paragraph 4.
5. Regarding the allegations contained in Paragraph 5, the Defendant admits that on or about June 3, 2016, the Oglala Sioux Tribe Department of Public Safety (OST DPS) and its employees, including Officer Charles Hunter, were providing law enforcement services on the Pine Ridge Indian Reservation pursuant to the contract admitted in Paragraph 4, above. The Defendant denies any further allegations or implications contained in Paragraph 5.
6. Defendant admits the allegations contained in Paragraph 6.
7. The Defendant is without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 7. To the extent an answer is required, the allegations are denied.

8. The Defendant is without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 8. To the extent an answer is required, the allegations are denied.
9. Regarding the allegations contained in Paragraph 9, the Defendant admits that on June 3, 2016, Officer Hunter was an employee of the OST DPS. The Defendant further admits that for the limited purpose related to this claim filed pursuant to the FTCA, on June 3, 2016 Officer Hunter was deemed to be an employee of the Bureau of Indian Affairs, an agency of the United States, who was acting within the course and scope of his employment. The Defendant denies the remaining allegations contained in Paragraph 9, including those alleged in Paragraphs 9(a)-(h).
10. [Paragraph 10 omitted from the Complaint]
11. The Defendant denies the allegations contained in Paragraph 11.
12. The Defendant is without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 12. To the extent an answer is required, the allegations are denied.
13. Regarding the allegations contained in Paragraph 13, the Defendant admits that the laws of South Dakota will govern the

analysis of whether the United States, if a private person, would be liable to Plaintiff. The Defendant denies the remaining allegations contained in Paragraph 13.

14. Regarding the allegations contained in Paragraph 14, the Defendant admits that the Plaintiff timely filed her administrative claim with the Department of the Interior by letter dated October 16, 2017, and that the claim was denied on or about February 7, 2018. The Defendant denies any remaining allegations contained in Paragraph 14.

The Defendant further denies the Plaintiff's prayer for judgment against the United States of America, including judgment for pain and suffering, wrongful death, costs, disbursement, and any and all relief.

#### **AFFIRMATIVE DEFENSES**

1. The Complaint fails to state a claim upon which relief can be granted.
2. The negligence and/or actions of the Decedent and/or third parties was the proximate cause of the accident, the death of Decedent, and any and all alleged injuries or damages sustained by the Plaintiff.
3. None of the Defendant's acts or omissions were the proximate cause of any injury or damages to the Plaintiff.
4. The Defendant is not liable for any pre-existing, intervening, or

superseding occurrences that caused or compounded any injuries suffered by the Decedent.

5. The award sought is not reduced to reflect non-collateral source payments such as federal benefits paid out of general funds on account of injury. The Defendant asserts a set-off for any and all payments of other benefits provided to or on behalf of the Plaintiff from federal sources deemed not to be collateral sources.
6. In the event that the United States is found to have been negligent, which negligence is denied, the negligence of the Decedent and/or third parties was the proximate cause of and/or contributed to any alleged injuries or damages sustained, thereby barring recovery, or alternatively, mandating that any recovery be proportionately reduced.
7. The Defendant is not liable for any injuries or damages that the Decedent or the Plaintiff failed to reasonably mitigate.

The Defendant reserves the right to amend this Answer, to clarify its admissions and/or denials, and to assert additional affirmative defenses that may be revealed during discovery.

WHEREFORE, having fully answered, the Defendant asks the Court to:

- (A) Enter judgment against the Plaintiff and award nothing;
- (B) Dismiss Plaintiff's suit with prejudice;
- (C) Assess costs against Plaintiff; and

(D) Award the Defendant all other relief to which it is entitled.

Dated this 10th day of January, 2019.

RONALD A. PARSONS, JR.  
United States Attorney

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