

**IN THE NORTHERN CHEYENNE TRIAL COURT
NORTHERN CHEYENNE TRIBE
LAME DEER, MONTANA**

NORTHERN CHEYENNE TRIBE,

Plaintiff,

v.

MELISSA RAE FISHER,
MELISSA LONEBEAR,
HOWARD JAMES ONTIVEROS,
GWENDOLYN AMBER TALAWYMA,
RHYAL BERTHA NICOLE ROWLAND,

Case No. AR26-035
Case No. AR26-038
Case No. AR26-039
Case No. 26-040 and
Case No. 26-043

Defendants.

**DEFENDANTS' MOTION TO DISMISS SUPERSEDING CRIMINAL COMPLAINT,
TO DISQUALIFY SPECIAL PROSECUTORS, TO SUPPRESS EVIDENCE,
AND IN THE ALTERNATIVE FOR BILL OF PARTICULARS AND STAY**

Defendants Melissa Rae Fisher, Melissa Lonebear, Howard James Ontiveros, Gwendolyn Amber Talawyma, and Rhyal Bertha Nicole Rowland, by and through counsel, respectfully move this Court for an order: (1) dismissing the Superseding Criminal Complaint in whole or in part; (2) disqualifying the Special Prosecutors; (3) suppressing evidence derived from arrests unsupported by probable cause; (4) requiring a bill of particulars if any charge remains; and (5) if the Court declines to dismiss outright, staying the proceedings and addressing the threshold constitutional and jurisdictional issues presented by Defendants' status as Tribal Council members and by the Special Prosecutors' authority to appear.

INTRODUCTION

This prosecution turns on a disputed question of tribal governance: whether Defendants were

lawfully removed from office before October 8, 2025, and whether the prosecution can lawfully proceed on the basis that they lacked authority. The Court has already recognized that official status matters to many of the charged allegations and that the Tribe bears the burden of proving the absence of lawful council status and the Defendants' knowledge of that absence where status is an element or predicate to criminality.

The Superseding Criminal Complaint remains defective because it does not plead the essential facts necessary to establish those status-dependent offenses, and it also fails to plead sufficient facts for the allegations that are supposedly independent of officeholder status. The complaint is conclusory, the affidavits submitted by Defendants undermine the prosecution's factual assertions, and the Special Prosecutors have not shown lawful authority to act for the Tribe under the Tribe's governing law and the contract-approval requirements applicable to tribal council engagement.

For those reasons, dismissal is warranted. At a minimum, the Court should require a bill of particulars, suppress evidence obtained without probable cause, and require the Special Prosecutors to establish lawful authority before continuing to appear in this matter.

SUMMARY OF ARGUMENT

The Superseding Criminal Complaint should be dismissed, at least in part, for four independent reasons.

First, it fails to plead the essential facts required by the Northern Cheyenne Tribal Code and by basic charging principles articulated in *Giordenello v. United States*, 357 U.S. 480 (1958), *Russell v. United States*, 369 U.S. 749 (1962), and *Hamling v. United States*, 418 U.S. 87 (1974). It repeatedly assumes the central disputed premise that Defendants acted "without lawful authority" but does not plead facts showing lawful removal or knowledge of removal.

Second, the affidavits of Cordell Little Coyote, Alicia Cano, and Melanie Whiteman

affirmatively undercut the prosecution's factual allegations. Those affidavits show that the purported removal of the Council members was invalid, that Howard Ontiveros was not shown to have shut off the power, that no intimidation was observed, and that witness statements were coached or coordinated.

Third, the Special Prosecutors have not established lawful authority to represent the Tribe in this matter. The Northern Cheyenne Constitution and Bylaws require Tribal Council authorization to employ legal counsel and require approval by the Secretary of the Interior. The record indicates that the purported contract was not lawfully authorized when signed, was not approved by the Bureau of Indian Affairs, and was only later ratified by a disputed council. The Court should not recognize the Special Prosecutors until they show lawful authority.

Fourth, the charges are infected by probable-cause and selective-enforcement problems, especially where the prosecution rests on generalized accusations, disputed governance, and witness manipulation. The Court should not permit the case to proceed on conclusory allegations where the affidavits and the record contradict the prosecution's theory.

STATEMENT OF FACTS

A. The Governing Law of the Northern Cheyenne Tribe

The Northern Cheyenne Constitution and Bylaws provide that the Tribal Council has the power “[t]o employ legal counsel,” but that “the choice of counsel and fixing of fees” are “subject to approval of the Secretary of the Interior.” The Tribal Council is the governing body of the Tribe under Article III. The Constitution therefore contemplates that tribal legal counsel engagements are subject to formal tribal authorization and the approval requirements stated in the tribal charter and applicable federal law.

B. The Special Prosecutors' Contract¹

The record includes an engagement letter from GableGotwals stating that the Northern Cheyenne Tribe engaged the firm as Special Prosecutors effective October 14, 2025. The letter is dated October 22, 2025. The signature page reflects that Gene Small signed the contract on November 3, 2025.

Defendants contend that Gene Small lacked authority to bind the Tribe on November 3, 2025, because no valid council resolution had authorized the engagement at that time. Defendants further contend that the purported council approval did not occur until December 30, 2025, and that the Bureau of Indian Affairs never approved the contract or the resolution because the BIA does not recognize the disputed council. The stamp on the second page of the later resolution reflects that the BIA received the resolution on December 30, 2025, but receipt is not approval.

C. The Affidavit of Cordell Little Coyote²

Chief Cordell Little Coyote states under oath that he is a hereditary and seated Chief of the Northern Cheyenne Tribe. He states that the “Chiefs’ Declaration” purportedly removing the Tribal Council members was not issued by a properly constituted body of Chiefs, was not supported by the required number or consensus of Chiefs, relied in part on individuals who were not properly seated Chiefs, and did not follow traditional or constitutional process. He further states that, because the declaration was invalid, the Council members it purported to remove were not lawfully removed from office.

D. The Affidavit of Alicia Cano³

Alicia Cano states under oath that on October 8, 2025, she was present in her office area in the

¹ A true and correct copy of the Special Prosecutors Contract and Resolution DOI – 023 (2026) is attached as Exhibit A.

² A true and correct copy of Mr. Little Coyote’s affidavit is attached as Exhibit B.

³ A true and correct copy of Ms. Cano’s affidavit is attached as Exhibit C.

Legislative Branch when the power went out. She states that Howard Ontiveros was present in the office area with her and others, that she did not observe him leave the office before the outage, and that she observed Corey Spotted Elk moving back and forth in the hallway before the outage. She believed Corey Spotted Elk may have been involved in the outage.

Cano further states that the outage affected only the Legislative Branch side of the building and that Ontiveros, along with another individual, later went to the area associated with the power controls and helped restore power. She also states that when Denise Swank entered and spoke with individuals in the office, the conversation was conducted in a normal tone, no one yelled at Denise Swank, and she did not observe intimidation.

E. The Affidavit of Melanie Whiteman⁴

Melanie Whiteman states under oath that she was working in the office when the power went out and that she saw a bald male individual come out of a closet in the hallway at or around the time of the outage. She states that she has since learned the individual was Corey Spotted Elk. She further states that she did not observe Howard Ontiveros at or near the location where the power would have been shut off.

Whiteman also states that after the incident she was directed to prepare a written complaint, that Denise Swank provided a Voluntary Incident Statement Form and instructed her what to say and how to say it, and that Denise Swank wanted her and Rita Hiwalker to provide the same statements. Whiteman states that she understood Denise Swank was directing her to identify a Tribal Council member as the person responsible for shutting off the power even though Whiteman had not observed that. Whiteman refused to do so and instead submitted a complaint based on what she personally observed.

GOVERNING LAW

A criminal charging instrument must allege the essential facts constituting the offense and provide sufficient specificity to permit the accused to prepare a defense and to allow judicial review of probable cause. *Giordenello v. United States*, 357 U.S. 480 (1958); *Russell v. United States*, 369 U.S. 749 (1962); *Hamling v. United States*, 418 U.S. 87 (1974). A complaint that merely tracks statutory language without alleging the underlying facts, or that leaves a key issue undefined, is insufficient.

Under the Northern Cheyenne Tribal Code, criminal liability requires the culpability element applicable to the charged offense, and no person may be convicted without proof of the necessary mental state and facts establishing the offense. The Code also recognizes the relevance of lawful public duty and official authority to whether conduct is criminal at all. See N.C.T.C. §§ 7.1.7(B), 7.2.2.

Probable cause requires a reliable factual basis for each charged offense. It cannot rest on conclusory allegations, post hoc assumptions, or disputed statements contradicted by sworn evidence.

ARGUMENT

I. **THE SUPERSEDING CRIMINAL COMPLAINT FAILS TO PLEAD ESSENTIAL FACTS.**

II.

The Superseding Complaint repeatedly asserts that Defendants acted “without lawful authority,” but it does not plead facts showing how or when Defendants were lawfully removed from office. It does not allege facts showing a valid constitutional or legal process by which their offices were vacated. It does not plead facts showing that Defendants knew they had been removed. And it does not set out facts sufficient to distinguish conduct that would be criminal only if Defendants

⁴ A true and correct copy of Ms. Whiteman affidavit is attached as Exhibit D.

lacked officeholder authority from conduct that would be innocent or otherwise justified if they remained lawful council members.

That pleading deficiency is fatal under *Giordenello v. United States*, 357 U.S. 480 (1958), *Russell v. United States*, 369 U.S. 749 (1962), and *Hamling v. United States*, 418 U.S. 87 (1974).

The complaint leaves the chief issue undefined and forces Defendants to guess at the theory of liability.

The defect is especially serious here because the Court has already recognized that the status question matters to the prosecution. If the Tribe must prove that Defendants were not council members and knew that fact, then the charging instrument must at least plead facts supporting that proposition. It does not.

I. THE STATUS-DEPENDENT COUNTS FAIL BECAUSE THE COMPLAINT DOES NOT PLEAD A LAWFUL REMOVAL OR KNOWLEDGE OF REMOVAL.

The counts that depend on Defendants' lack of lawful authority cannot stand unless the prosecution pleads facts showing that Defendants were lawfully removed from office and knew that they had been removed. The Superseding Complaint does neither.

Chief Little Coyote's affidavit confirms that the purported Chiefs' Declaration was not issued by a properly constituted body, was not supported by the required consensus, relied in part on persons who were not properly seated Chiefs, and did not follow traditional or constitutional process. He further states that, because the declaration was invalid, the Council members it purported to remove were not lawfully removed. That sworn testimony directly undermines the prosecution's central premise.

The complaint does not allege facts establishing a lawful removal. It merely recites the conclusion that Defendants acted "without lawful authority." That is not enough. Under the

Court's own framework, and under ordinary pleading standards, the prosecution must plead the facts of lawful removal and knowledge of removal where status is an element or predicate to criminality.

I. THE MENS REA ALLEGATIONS ARE INSUFFICIENT UNDER N.C.T.C. § 7.1.7(B).

The Tribal Code's culpability provisions require more than conclusory assertions of wrongdoing. The complaint does not plead facts supporting the necessary culpable mental state for the charged offenses, especially where the prosecution contends that Defendants believed they were still acting as Tribal Council members.

The complaint says Defendants acted "without lawful authority," but it does not allege facts showing they knew that to be true. It does not plead facts showing they knowingly intended to commit a crime rather than to perform what they believed were official duties. It does not plead facts showing that the alleged acts were done with the requisite criminal culpability rather than under a claim of right or public duty.

To the extent the prosecution seeks to rely on official-status-dependent conduct, the complaint must plead facts negating lawful duty and supporting culpability under N.C.T.C. § 7.1.7(B). It does not.

I. THE PUBLIC-DUTY PRINCIPLE REQUIRES DISMISSAL OR NARROWING OF THE CHARGES.

The Northern Cheyenne Tribal Code's public-duty provision further underscores the defect in the charging instrument. Where the alleged conduct is consistent with official action by persons who believed they were still lawfully serving as Tribal Council members, the prosecution must plead and prove facts showing why that conduct was not protected or authorized by public duty.

Many of the allegations here are inseparable from the disputed question of whether Defendants

were still acting as council members. Entering the Capitol building, speaking with employees, and asserting authority are not inherently criminal if done by officials acting under claimed officeholder authority. The complaint must therefore plead facts showing why those acts were criminal notwithstanding the claimed public duty. It does not.

I. THE AFFIDAVITS OF CORDELL LITTLE COYOTE, ALICIA CANO, AND MELANIE WHITEMAN DEFEAT PROBABLE CAUSE.

A. The Affidavit of Cordell Little Coyote defeats the prosecution's authority theory.

Chief Little Coyote's affidavit shows that the purported Chiefs' Declaration was invalid and that the Council members were not lawfully removed. That means the prosecution cannot rely on a bare assertion that Defendants were "trespassers" or outsiders. At minimum, the issue of authority was genuinely disputed and unresolved.

B. The Cano affidavit contradicts the power-outage allegation and the intimidation theory.

Cano states that Howard Ontiveros was seated in the office area at the time the power went out and that she did not observe him leave before the outage. She observed Corey Spotted Elk moving back and forth in the hallway before the outage and believed he may have been involved. She also states that Ontiveros later went to the area associated with the power controls and helped restore power.

Those facts undermine any allegation that Ontiveros intentionally shut off the power. Cano also states that the conversation in the office was normal, that no one yelled at Denise Swank, and that she did not observe intimidation. That directly undercuts allegations that Defendants intimidated or threatened employees.

C. The Whiteman affidavit further undermines the power allegation and proves witness manipulation.

Whiteman states that she observed a bald male individual coming out of a closet in the hallway

at the time of the outage and has since identified that person as Corey Spotted Elk. She states that she did not observe Howard Ontiveros at or near the location where the power would have been shut off.

More importantly, Whiteman states that Denise Swank directed her to prepare a written complaint, provided her with a form, and instructed her what to say and how to say it. She states that Denise Swank wanted her and Rita Hiwalker to give the same statements, and that she understood Swank was directing her to identify a Tribal Council member as the person responsible for the outage even though she had not observed that. Whiteman refused and instead submitted a statement based on her own observations.

That is classic evidence of witness manipulation. It shows that the prosecution's factual foundation was being shaped to match a predetermined narrative. It also explains why the charging language lacks reliability. The Court should consider that evidence in evaluating probable cause, and it strongly supports dismissal or, at minimum, suppression, and a bill of particulars.

I. THE POWER-OFF ALLEGATION AGAINST HOWARD ONTIVEROS LACKS PROBABLE CAUSE.

II.

The Superseding Complaint alleges that Howard Ontiveros shut off the electrical power to the Little Wolf Capitol Building. The sworn affidavits contradict that allegation.

Cano places Ontiveros in the office area when the power went out and does not place him at the power controls. Whiteman places Corey Spotted Elk at or near the hallway closet at the relevant time and expressly states that she did not see Ontiveros at or near the location where the power would have been shut off. The affidavits are exculpatory and inconsistent with the complaint's

accusation.

The charge therefore lacks probable cause and should be dismissed as to Ontiveros.

VII. THE INTIMIDATION AND INTERFERENCE ALLEGATIONS ARE CONCLUSORY AND UNSUPPORTED.

The complaint alleges shouting, yelling, cursing, disruptive conduct, threats, and intimidation, but it fails to plead concrete facts establishing those allegations. It does not identify the specific threatening language. It does not identify the allegedly intimidated person with sufficient factual specificity in the relevant count. It does not distinguish between political disagreement, workplace conversation, and criminal intimidation.

Cano's affidavit directly contradicts the notion that the interaction was threatening or disruptive. She states the conversation was in a normal tone, no one yelled, and she observed no intimidation. On this record, the allegations remain conclusory and unsupported by probable cause.

VIII. THE SIMPLE ASSAULT CHARGE AGAINST MELISSA FISHER FAILS.

The complaint alleges that Melissa Fisher physically grabbed and forcibly removed "Tribal Employee 2" from a chair. But the pleading does not identify the victim by name, does not set forth the facts of the alleged touching or injury, and does not identify a witness with personal knowledge tying Fisher to the alleged assaultive conduct.

A criminal assault charge cannot rest on an unnamed victim, an unsupported identification of the defendant, and a conclusory allegation of force. The complaint does not plead enough facts to establish probable cause or to satisfy the required culpability element. The assault charge against Fisher should be dismissed.

IX. THE CONSPIRACY COUNT FAILS BECAUSE IT TREATS POLITICAL AND GOVERNMENTAL ACTIVITY AS CRIMINAL AGREEMENT.

The conspiracy count is built from allegations that Defendants traveled together, entered the building, posted on social media, and asserted that they were the Tribal Council and were “here to work.” That does not establish a criminal conspiracy.

At most, the allegations show coordinated political and governmental action by persons who believed they remained in office. Once Chief Little Coyote’s affidavit is considered, those acts are consistent with a good faith claim of official authority. A conspiracy requires facts showing an agreement to commit an actual offense. The complaint does not allege such facts.

X. THE WHITEMAN AFFIDAVIT SHOWS WITNESS MANIPULATION AND MAKES THE PROSECUTION’S FACTUAL FOUNDATION UNRELIABLE.

The integrity of this prosecution is undermined by the way witness statements were solicited and shaped. Whiteman states that Denise Swank provided her with a form and instructed her what to say and how to say it. Whiteman states that Swank wanted her and Rita Hiwalker to provide the same statements. Whiteman understood that Swank was directing her to identify a Tribal Council member as responsible for the power outage even though Whiteman had not observed that.

That evidence supports the defense argument that the prosecution’s witness narrative was coordinated rather than independently developed. It is especially significant because the allegations against Ontiveros and others depend heavily on the assertion that one of the Defendants sabotaged the building’s electrical power. Whiteman’s affidavit shows that the prosecution’s version of events is not trustworthy.

XI. THE SPECIAL PROSECUTORS HAVE NOT SHOWN LAWFUL AUTHORITY TO APPEAR.

The Northern Cheyenne Constitution and Bylaws provide that the Tribal Council has the power “[t]o employ legal counsel,” but that the choice of counsel and fixing of fees are “subject to approval of the Secretary of the Interior.” The record reflects that the Special Prosecutors are not

in-house tribal employees, but contract counsel engaged to prosecute these criminal matters. The governing question therefore is whether the contract was lawfully authorized and approved under the Tribe's Constitution and applicable federal law.

The record shows that it was not.

The engagement letter is dated October 22, 2025, and states an effective date of October 14, 2025. Yet the signature page shows Gene Small signed on November 3, 2025. Defendants contend that Gene Small had no authority to sign because no valid resolution authorized the contract at that time. Defendants further contend that the purported council approval did not occur until December 30, 2025, and that the Bureau of Indian Affairs never approved the contract or the resolution because it does not recognize the disputed council. The timestamp reflecting that the BIA received the resolution on December 30, 2025, is not an approval.

Whatever label the firm uses, the document is a contract for legal services. The Tribe's governing law requires council authorization and the necessary approval. The title "Special Prosecutor" does not exempt the agreement from those requirements.

The Special Prosecutors must, at the very least, demonstrate lawful authority before they are allowed to proceed with this case. If they fail to provide a legally valid contract along with any necessary BIA approval, the Court ought to disqualify them. Allowing prosecutors without proper authorization to pursue individuals who possess the authority to approve their contracts would certainly be unusual.

XII. THE PROSECUTION IS SELECTIVE AND POLITICALLY MOTIVATED.

This case arises from a governance dispute within the Tribe. The prosecution targets one faction

in a contested political conflict. The record reflects that the Tribe's prosecutor was terminated, special prosecutors were retained, and the charges were pursued in the context of competing claims of authority.

That does not alone establish a constitutional violation, but it reinforces the need for strict scrutiny of the charging facts and the evidence. The Court should not allow criminal process to be used to resolve a disputed political question where the complaint itself is unsupported by specific facts.

XIII. THE COURT SHOULD SUPPRESS EVIDENCE DERIVED FROM ARRESTS UNSUPPORTED BY PROBABLE CAUSE.

Because the complaint lacks probable cause for the status-dependent counts and because the affidavits contradict key factual allegations, any arrests predicated on those unsupported allegations were improper. Evidence derived from those arrests should be suppressed to the extent it was obtained as the fruit of an unsupported or unlawful arrest.

XIV. AT MINIMUM, THE COURT SHOULD REQUIRE A BILL OF PARTICULARS.

If the Court does not dismiss the complaint in whole, it should require a bill of particulars for any remaining charges identifying:

1. the factual basis for the alleged removal of Defendants from office;
2. the facts showing that Defendants knew they had been removed;
3. the specific factual basis for each count against each defendant;
4. the acts attributed to each defendant;
5. the identity of any alleged victim in the assault count;
6. the factual basis for the conspiracy count; and
7. the facts and authority supporting the Special Prosecutors' appointment and contract.

Without that detail, Defendants cannot adequately prepare their defense.

XV. THE COURT SHOULD STAY THE PROCEEDINGS IF IT DOES NOT DISMISS.

If the Court declines to dismiss the case outright, it should stay proceedings pending resolution of the threshold authority issues, including the lawful status of Defendants as council members and the lawful authority of the Special Prosecutors to appear in this matter.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court:

1. dismiss the Superseding Criminal Complaint in whole or in part;
2. dismiss the status-dependent counts for failure to plead essential facts and lack of probable cause;
3. dismiss or narrow the status-independent allegations for insufficient pleading and lack of probable cause;
4. dismiss the assault charge against Melissa Fisher;
5. dismiss the allegations concerning Howard Ontiveros and the alleged power shutoff;
6. disqualify the Special Prosecutors unless and until they show lawful authority to appear;
7. suppress evidence derived from arrests unsupported by probable cause;
8. order a bill of particulars if any charge remains; and
9. in the alternative, stay the proceedings pending resolution of the threshold authority issues.

RESPECTFULLY SUBMITTED on this 3rd day of April 2026.

Elmore Limberhand,
Steven A. Kelly
Lay Advocates for All Defendants
P.O. Box 988
Lame Deer, Montana 59043
(406) 477-6668

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of March April, I placed DEFENDANTS' MOTION TO DISMISS SUPERSEDING CRIMINAL COMPLAINT, TO DISQUALIFY SPECIAL PROSECUTORS, TO SUPPRESS EVIDENCE, AND IN THE ALTERNATIVE FOR BILL OF PARTICULARS AND STAY in the U.S. Mail, postage prepaid, to the following:

R. Trent Shores
Jillian K. Stuart
Ryan Heatherman
Gable Gotwals, LLC
Special Prosecutors for the Northern Cheyenne Tribe
100 Elgin Ave., Suite 200
Tulsa, Oklahoma 74120-1495

And emailed to: Hillary Stuart, HStuart@gablelaw.com

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