United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
May 8, 2026
Lyle W. Cayce
Clerk

No. 25-40204

Boaz Allyn-Feuer,

Plaintiff—Appellant,

versus

John Doe, *U.S. Border Patrol Agents 1-20*; United States of America,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 2:23-CV-117

Before Stewart, Graves, and Oldham,* *Circuit Judges*.

Per Curiam:**

Plaintiff-Appellant Boaz Allyn-Feuer was stopped at a Border Patrol checkpoint, where agents searched his car and pushed him. He sued under *Bivens* and the Federal Tort Claims Act (FTCA). The district court

* Oldham, *Circuit Judge*, concurring only in the judgment.

** This opinion is not designated for publication. *See* 5th Cir. R. 47.5.

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

dismissed his suit, finding that he failed to state a *Bivens* claim and an FTCA exception barred the remaining claims. We AFFIRM.

I. Facts and Procedural History

Allyn-Feuer was driving to Colorado when he was stopped at a mandatory Border Patrol checkpoint north of McAllen, Texas. A K9 dog and his agent handler approached his car. Because the K9 alerted, Allyn-Feuer was instructed to drive to secondary inspection and told he was being detained.

Agents ordered Allyn-Feuer out of his car, and one of the agents pushed him 20 to 30 feet and onto a bench. Allyn-Feuer claims that "[d]espite the lack of consent and lack of probable cause, at least 10 agents searched his car." The search left his car in disarray and caused damage to at least one piece of his property. He was not provided with documentation for the search and had no information about which agents searched his car.

Allyn-Feuer sued, alleging a *Bivens* claim against the Border Patrol Agents for an illegal search and seizure under the Fourth Amendment, and FTCA claims for false imprisonment, assault and battery, negligence, gross negligence, conversion, and property loss.

Defendant-Appellee the United States moved to dismiss for lack of subject matter jurisdiction. The district court determined that the *Bivens* claim "fail[ed] as a matter of law" because the court could not authorize a damages action against Border Patrol agents. And an FTCA exception barred the other claims. The district court first dismissed the case with prejudice, then corrected the judgment to dismiss without prejudice.

Allyn-Feuer appeals.

II. Standard of Review

This court reviews "dismissals under Federal Rule of Civil Procedure 12(b)(1) based on exceptions to the FTCA de novo." *Angulo v. Brown*, 978 F.3d 942, 948 (5th Cir. 2020). We also review de novo a dismissal for failure to state a claim. *Butler v. S. Porter*, 999 F.3d 287, 292 (5th Cir. 2021).

III. Discussion

A. The FTCA

"The FTCA was designed primarily to remove the sovereign immunity of the United States from suits in tort." *Millbrook v. United States*, 569 U.S. 50, 52 (2013) (citation modified). Under it, federal district courts have exclusive jurisdiction over claims against the United States for "'injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission' of a federal employee 'acting within the scope of his office or employment.'" *Id.* (quoting 28 U.S.C. § 1346(b)(1)).

The FTCA has several exceptions to the sovereign immunity waiver. 28 U.S.C. § 2680. The two relevant to this appeal are the "intentional-tort" and "customs-duty" exceptions, which we explain below. *Id.* § 2680(c), (h).

Allyn-Feuer's challenge to the FTCA claims dismissal is twofold: (1) intentional torts committed by law enforcement officers are cognizable despite any other exceptions, and (2) because the Border Patrol Agents were performing an immigration and not a customs inspection, the claims cannot be barred by the customs-duty exception.

First, we decide that Allyn-Feuer's false imprisonment, assault, and battery claims survive an encounter with the FTCA's intentional-tort exception. Then, we analyze whether the customs-duty exception bars the claims. We conclude that it does.

1. The Intentional-Tort Exception and the Law-Enforcement Proviso

The FTCA's intentional-tort exception reinstates immunity for "[a]ny claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights[.]" 28 U.S.C. § 2680(h).

The intentional-tort exception contains its own immunity waiver, known as the "law-enforcement proviso." *Millbrook*, 569 U.S. at 52. The proviso states that for "acts or omissions of investigative or law enforcement officers of the United States Government, the provisions of this chapter and section 1346(b) of this title shall apply to any claim arising . . . out of assault, battery, false imprisonment, false arrest, abuse of process, or malicious prosecution." 28 U.S.C. § 2680(h). An "investigative or law enforcement officer[]" is "any officer of the United States who is empowered by law to execute searches, to seize evidence, or to make arrests for violations of Federal law." *Id.*

Allyn-Feuer posits that because he alleged false imprisonment, assault, and battery by law enforcement officers, the intentional-tort exception's law-enforcement proviso applies, and his claims are not barred.

The law-enforcement proviso only applies to claims that fall within the intentional-tort exception. *Martin v. United States*, 605 U.S. 395, 405–07 (2025). Due to the proviso's placement within the intentional-tort exception's subsection, and because it addresses the same "subject matter"—intentional torts—the proviso modifies only that exception. *Id.* at 403–07. So the law-enforcement proviso applies to the intentional-tort exception and cannot serve to override the other exceptions in § 2680.

The Supreme Court explained how courts must assess and reconcile two FTCA exceptions. *Id.* at 401. First, courts assess the intentional-tort exception, so that "if a plaintiff alleges that a federal law enforcement officer committed one or more of [the] six torts [in the law-enforcement proviso], the proviso will ensure those claims survive an encounter with the intentional-tort exception." *Id.* Second, courts consider whether another exception precludes *any* of the plaintiffs' claims. *Id.* at 401, 414. Even intentional-tort claims can be barred by a different exception. *Id.* at 414.

In following *Martin*'s instructions, we look first to the intentional-torts exception. The law-enforcement proviso applies because Allyn-Feuer alleges false imprisonment, assault, and battery, and the Border Patrol Agents are law enforcement officers. Allyn-Feuer's claims survive the intentional-tort exception, but we must determine whether they are barred by another exception.

2. The Customs-Duty Exception

The FTCA also has a customs-duty exception. 28 U.S.C. § 2680(c). "Any claim arising in respect of the assessment or collection of any tax or customs duty, or the detention of any goods, merchandise, or other property by any officer of customs or excise or any other law enforcement officer" is barred. *Id.*

Our caselaw provides some guidance about the scope of this exception. In *Jeanmarie*, the plaintiff reentered the United States via a land port of entry and was stopped for inspection. *Jeanmarie v. United States*, 242 F.3d 600, 601 (5th Cir. 2001). Twice denied the use of a restroom, the plaintiff walked away, and U.S. Customs agents forcibly restrained and shoved him against a counter. *Id.* The plaintiff sued for assault, battery, and false arrest and imprisonment. *Id.* at 602. The United States argued that the discretionary-function and customs-duty exceptions entitled it to immunity. *Id.*

The plaintiff countered that the law-enforcement proviso is an exception to the customs-duty exception. *Id.* at 603. We held that intentional tort "claims *are barred* by the customs-duty exception if the alleged torts arose from the inspection, seizure, or detention of goods by a Customs agent because such claims involve conduct covered by [the statute]." *Id.* at 604.

Allyn-Feuer maintains that the customs-duty exception should not apply because the Agents were not "seeking to assess or collect any customs duty, but were performing a law enforcement task." And the use of force was not related to the "detention of goods and merchandise."

However, his argument has no support in our caselaw. In *Davila v. United States*, the plaintiff was stopped at a U.S. Border Patrol checkpoint in Texas, and his vehicle was referred for further inspection. 713 F.3d 248, 253 (5th Cir. 2013). Border Patrol agents did not find contraband, but detained the plaintiff for two hours to call a K9 unit. *Id.* The plaintiff's son escaped in the vehicle, and a chase ensued. *Id.* During the pursuit, the plaintiff was detained at a checkpoint cell and questioned about his son. *Id.* The plaintiff claimed the government was liable under the FTCA for false imprisonment. *Id.* at 254.

Because the false imprisonment "occurred well after the search of [the plaintiff's] car by Border Patrol agents," we held that the customs-duty exception did not apply. *Id.* at 257. The tort did not occur during the "detention of any goods, merchandise, or other property by any officer of customs." *Id.* (citing 28 U.S. § 2680(c)). Yet, we noted that "even intentional torts committed by law enforcement officers are exempt from FTCA suits when such torts were committed during circumstances that would warrant a detention-of-goods exception." *Id.* at 256.

So even intentional tort claims are subject to the customs-duty exception. In detaining and searching Allyn-Feuer's car in secondary inspection, the Border Patrol Agents were "detaining goods" and executing their customs duties. Since Allyn-Feuer's claims arose out of the detention of goods, the customs-duty exception applies, and the United States' sovereign immunity is not waived. The court therefore does not have subject matter jurisdiction over his FTCA claims.

Allyn-Feuer makes a final, troubling argument: the consequence of our conclusion is that Border Patrol agents may have "carte blanche to commit any intentional tort while at any similar border checkpoint." But the fact remains "that the [FTCA] waives the immunity of the United States and that we should not take it upon ourselves to extend the waiver beyond that which Congress intended." *Smith v. United States*, 507 U.S. 197, 203 (1993) (citation modified). In barring Allyn-Feuer's claims, we apply the customs-duty exception as intended by the statute.

B. *Bivens*

Allyn-Feuer also argues that the district court should not have *sua sponte* dismissed his *Bivens* claim against the John Doe Border Patrol agents without notice and an opportunity to respond.

While the FTCA claims presented a jurisdictional issue, the district court *sua sponte* dismissed the *Bivens* claim for failure to state a claim. *See Zuspann v. Brown*, 60 F.3d 1156, 1160 (5th Cir. 1995) (dismissing *Bivens* action for failure to state a claim, where district court had found it lacked jurisdiction to hear the *Bivens* claim).

Generally, "a district court may dismiss a complaint on its own for failure to state a claim," but it may do so only "as long as the procedure employed is fair." *Carroll v. Fort James Corp.*, 470 F.3d 1171, 1177 (5th Cir. 2006) (citation modified). "Fairness in this context requires both notice of the court's intention and an opportunity to respond." *Id.* (citation modified).

However, "a *sua sponte* dismissal could be appropriate if the order is without prejudice." *Biron v. Upton*, 737 F. App'x 713, 716 (5th Cir. 2018) (per curiam). The district court dismissed without prejudice and did not err.

IV. Conclusion

For the foregoing reasons, we AFFIRM the district court's judgment.