

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Naqibullah Nadeem Mohammadullah Khan v. United States of
America

Khan v. United States · No. 2:25-cv-1522-DC-CKD (PS) · Decided December 23, 2025

SUMMARY

The document contains a magistrate judge’s findings and recommendations on the United States’ motion to dismiss an FTCA action concerning the handling and denial of the plaintiff’s Special Immigrant Visa application. The court recommends dismissal without leave to amend for lack of subject matter jurisdiction because the alleged injuries occurred in Afghanistan and therefore fell within the FTCA’s foreign-country exception. The court did not reach the government’s additional arguments concerning the private-party analogue requirement, consular nonreviewability, and timeliness.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	United States Magistrate Judge
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	December 23, 2025
DOCKET	2:25-cv-1522-DC-CKD (PS)
DISPOSITION	dismissed
PROCEDURAL POSTURE	Plaintiff brought an action under the Federal Tort Claims Act. The United States moved to dismiss under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), and the magistrate judge issued findings and recommendations recommending dismissal for lack of subject matter jurisdiction.
STANDARD OF REVIEW	On a facial Rule 12(b)(1) challenge, the court considers whether the complaint establishes subject matter jurisdiction. The court also considered the Rule 12(b)(6) motion, but resolved the matter on jurisdictional grounds.
PRECEDENTIAL VALUE	nonprecedential

TOPICS

subject matter jurisdiction

motions to dismiss

foreign affairs

immigration

civil procedure

PRACTICE AREAS

Federal Tort Claims Act

sovereign immunity

federal civil procedure

immigration

QUESTIONS PRESENTED

1. Whether the FTCA's foreign-country exception, 28 U.S.C. § 2680(k), bars claims based on injuries plaintiff allegedly suffered in Afghanistan.
2. Whether the court lacks subject matter jurisdiction over plaintiff's FTCA claims because the alleged injuries occurred in a foreign country.
3. Whether the complaint should be dismissed without leave to amend because the jurisdictional defect cannot be cured.

HOLDINGS

1. The FTCA's foreign-country exception bars plaintiff's claims because the alleged injuries were suffered in Afghanistan, regardless of where the allegedly tortious conduct occurred.
2. The court lacks subject matter jurisdiction over plaintiff's FTCA claims because the FTCA's sovereign-immunity waiver does not apply.
3. Dismissal without leave to amend is appropriate because the jurisdictional defect cannot be cured by amendment.

KEY QUOTATIONS

“ “[T]he FTCA’s foreign country exception bars all claims based on any injury suffered in a foreign country, regardless of where the tortious act or omission occurred.” ” (at 2)

“ Thus, the court lacks jurisdiction over plaintiff’s claim.” (at 2)

FACTUAL BACKGROUND

Plaintiff was a construction contractor on U.S.-funded infrastructure and renovation projects in Afghanistan and applied for a Special Immigrant Visa for himself and his family. During a second interview at the U.S. Embassy in Kabul, embassy personnel allegedly disclosed confidential contact and immigration information, causing rumors, hostility, and safety risks. The Embassy denied the SIV application in 2021 based on an alleged continuing marital relationship with plaintiff's first wife. Plaintiff alleged harm from the denial and mishandling of his SIV, including exclusion from U.S. evacuation flights and relocation to Pakistan before receiving SIVs in April 2024.

PROCEDURAL HISTORY

Plaintiff filed the action on June 2, 2025, and filed a redacted complaint on July 24, 2025. The United States moved to dismiss on August 8, 2025, asserting the FTCA foreign-country exception, consular nonreviewability, lack of a private-party analogue, and untimeliness. Plaintiff opposed and the United States replied. The

magistrate judge recommended granting the Rule 12(b)(1) motion and dismissing without leave to amend, subject to district-judge review under 28 U.S.C. § 636(b)(1).

DISPOSITION

dismissed

CASES CITED

- United States v. Mitchell, 463 U.S. 206, 212 (1983)
- Gilbert v. DaGrossa, 756 F.2d 1455, 1458 (9th Cir. 1985)
- Foster v. United States, 522 F.3d 1071, 1074 (9th Cir. 2008)
- Meredith v. United States, 330 F.2d 9, 10 (9th Cir. 1964), cert. denied, 379 U.S. 867 (1964)
- Sosa v. Alvarez-Machain, 542 U.S. 692, 712 (2004)
- S.H. by Holt v. United States, 853 F.3d 1056, 1058 (9th Cir. 2017)
- Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998)
- Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 NAQIBULLAH NADEEM No. 2:25-cv-1522-DC-CKD (PS)
MOHAMMADULLAH KHAN, 12 Plaintiff, 13 FINDINGS AND RECOMMENDATIONS v. 14
UNITED STATES OF AMERICA, 15 Defendants. 16 17 Plaintiff Naqibullah Nadeem
Mohammadullah Khan proceeds without counsel and seeks 18 relief under the Federal Tort Claims
Act.

This matter is before the undersigned pursuant to Local 19 Rule 302(c)(21). See 28 U.S.C. § 636(b)(1). Defendant's motion to dismiss pursuant to Rule 20 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure is before the court. (ECF No. 23.) 21 The court previously vacated the hearing set on this motion to accommodate the briefing schedule 22 and now finds this matter suitable for decision without oral argument.

See Local Rule 230(g). For 23 the reasons set forth below, the court lacks subject matter jurisdiction over plaintiff's claim and 24 the complaint should be dismissed without leave to amend. 25 I. Background 26 Plaintiff paid the filing fee and filed the complaint on June 2, 2025. (ECF No. 1.)

The 27 court later permitted plaintiff to re-file the complaint with redactions of dates of birth and minor's 28 names. (ECF No. 16.) Plaintiff filed the redacted complaint on July 24, 2025. (ECF No. 17.) 1 Under the complaint's allegations, plaintiff was a construction contractor on U.S.-funded 2 infrastructure and renovation projects in Afghanistan. (ECF No. 17 at 8.)

In early 2019, he 3 applied for a Special Immigrant Visa (“SIV”) for himself and his family. (Id.) Plaintiff appeared 4 for two SIV interviews at the U.S. Embassy in Kabul, Afghanistan (the “Embassy”). (Id.) At the 5 second interview, plaintiff and his wife were treated disrespectfully and subjected to inappropriate 6 and culturally insensitive questioning.

(Id. at 10.) 7 Also at the second interview, plaintiff complied with requests to provide contact 8 information for friends and family members, “while explicitly requesting that this information 9 remain confidential due to past threats and the worsening security environment in Afghanistan.” 10 (ECF No. 17 at 8.)

However, embassy personnel called individuals on the contact list and 11 disclosed plaintiff’s immigration status, which led to dangerous rumors that plaintiff was a spy, 12 community hostility, and safety risks to his family. (Id. at 9.) 13 Although plaintiff complied fully with all requirements, he received formal notice that his 14 SIV application was denied on June 6, 2021.

(ECF No. 17 at 11.) The U.S. Embassy Consular 15 Office explained via email to plaintiff’s counsel at the time “[t]he investigation revealed that the 16 applicant continues to practice a ‘married relationship’ with his first wife.

As it relates to 17 polygamy, this is defined under U.S. immigration law as ‘visiting the spouse, providing financial 18 support, or keeping in phone contact.’” (Id.) Plaintiff alleges immigration laws were misapplied 19 by incorrectly equating legitimate parental duties with an intent to practice polygamy. (Id. at 11- 20 12.) 21 The Afghan government collapsed on August 15, 2021, after which plaintiff and his 22 family were excluded from official U.S. evacuation flights.

(ECF No. 17 at 11-13.) Plaintiff and 23 his family relocated to Pakistan under temporary visa status and were granted SIVs in April 2024. 24 (Id. at 14.) Through this suit, plaintiff seeks relief for harm suffered from the improper denial and 25 mishandling of his SIV. (Id. at 16.) 26 The United States filed the motion to dismiss on August 8, 2025. (ECF No. 23.)

The 27 United States asserts a facial attack on subject matter jurisdiction arguing (1) the FTCA’s waiver 28 of sovereign immunity does not apply to claims arising in a foreign country; (2) the claim is 1 barred by the doctrine of consular nonreviewability; and (3) the FTCA’s waiver of sovereign 2 immunity does not apply where there is no private party analog.

(ECF No. 23-1 at 4-7.) The 3 United States also asserts the claim is untimely filed under the applicable two-year statute of 4 limitations. (Id. at 8.) Plaintiff opposed the motion. (ECF No. 31.) The United States filed a reply. 5 (ECF No. 32.) 6 II. Subject Matter Jurisdiction 7 “It is axiomatic that the United States may not be sued without its consent and that the 8 existence of consent is a prerequisite for jurisdiction.” United States v. Mitchell, 463 U.S. 206, 9 212 (1983).

Accordingly, for a court to have jurisdiction over an action against the United States, 10 the United States must have expressly waived its right to sovereign immunity. *Gilbert v. 11 DaGrossa*, 756 F.2d 1455, 1458 (9th Cir. 1985). 12 “The FTCA waives sovereign immunity for claims against the federal government arising 13 from torts committed by federal employees.” *Foster v. United States*, 522 F.3d 1071, 1074 (9th Cir. 14 Cir.

2008) (citing 28 U.S.C. § 1346(b)(1)). However, the FTCA’s waiver of sovereign immunity 15 does not apply to “[a]ny claim arising in a foreign country.” 28 U.S.C. § 2680(k). The exception 16 in § 2680(k) applies, for example, to injuries that occur on premises occupied by U.S. embassies 17 and consulates. *Meredith v. United States*, 330 F.2d 9, 10 (9th Cir. 1964), cert. denied, 379 U.S. 18 867 (1964).

19 Plaintiff argues 28 U.S.C. § 2680(k) does not apply because his claim involves domestic 20 conduct and domestic injury. (ECF No. 31 at 1-2.) The argument is unavailing. “[T]he FTCA’s 21 foreign country exception bars all claims based on any injury suffered in a foreign country, 22 regardless of where the tortious act or omission occurred.” *Sosa v. Alvarez-Machain*, 542 U.S. 23 692, 712 (2004).

In this context, “an injury is suffered where the harm first “impinge[s] upon the 24 body[.]” S.H. by *Holt v. United States*, 853 F.3d 1056, 1058 (9th Cir. 2017). Plaintiff suffered the 25 alleged injuries in Afghanistan.

Accordingly, his claim or claims arose in a foreign country within 26 the meaning of 28 U.S.C. § 2680(k). 27 Pursuant to 28 U.S.C. § 2680(k), the FTCA’s waiver of sovereign immunity does not 28 apply. Thus, the court lacks jurisdiction over plaintiff’s claim. This jurisdictional defect cannot be 1 | cured. Defendant’s motion to dismiss should be granted and plaintiff’s complaint should be 2 || dismissed without leave to amend.!

3 Ill. Recommendation 4 In accordance with the above, IT IS RECOMMENDED that defendant’s motion to 5 || dismiss under Rule 12(b)(1) of the Federal Rules of Civil Procedure (ECF No. 23) be granted and 6 || plaintiff’s complaint be dismissed without leave to amend for lack of subject matter jurisdiction. 7 These findings and recommendations are submitted to the United States District Judge 8 || assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1).

Within fourteen (14) 9 || days after being served with these findings and recommendations, any party may file written 10 || objections with the court and serve a copy on all parties. Such a document should be captioned 11 || “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections 12 | shall be served on all parties and filed with the court within fourteen (14) days after service of the 13 || objections.

The parties are advised that failure to file objections within the specified time may 14 || waive the right to appeal the District Court’s order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 15 || 1998);

Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991). 16 | Dated: December 23, 2025 / ae □□ /
a Lys ae 18 UNITED STATES MAGISTRATE JUDGE 19 20 || 8, khan1522.mtd 21 22 23 24 25
26 | In the interests of judicial economy, the court need not address defendant's further arguments
27 || that the court also lacks subject matter jurisdiction because there is no private party analog for
the FTCA claim, that the court also lacks subject matter jurisdiction based on the doctrine of
consular 28 | nonreviewability, and that the claim is time-barred.