

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PRECEDENTIAL VALUE	nonprecedential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)