

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
OKLAHOMA

Anthony J. Romero v. United States of America

Romero v. United States · No. CIV-24-1233-R · Decided January 13, 2026

SUMMARY

The United States District Court for the Western District of Oklahoma partially adopts a magistrate judge’s Report and Recommendation in an action under the Federal Tort Claims Act. The court dismisses the negligence claims without prejudice because the plaintiff failed to identify a sufficient private-party analogue under Oklahoma law to establish jurisdiction. The court grants the pro se plaintiff thirty days to file an amended complaint.

CASE DETAILS

COURT	United States District Court for the Western District of Oklahoma
JURISDICTION	United States District Court for the Western District of Oklahoma
DECIDED	January 13, 2026
DOCKET	CIV-24-1233-R
DISPOSITION	dismissed
PROCEDURAL POSTURE	The district court reviewed a magistrate judge's report and recommendation recommending dismissal of a pro se Federal Tort Claims Act negligence complaint for lack of subject matter jurisdiction. The plaintiff objected, and the district court conducted de novo review of the specifically challenged portions.
STANDARD OF REVIEW	De novo review of the portions of the magistrate judge's report and recommendation to which a specific objection was made under 28 U.S.C. § 636(b)(1)(C). On the motion to dismiss, the court accepted well-pleaded factual allegations as true and considered whether they plausibly stated a claim and established subject matter jurisdiction.
PRECEDENTIAL VALUE	unpublished district court order
PARTIES	Anthony J. Romero v. United States of America

TOPICS

- subject matter jurisdiction
- motions to dismiss
- negligence
- civil procedure
- personal injury

PRACTICE AREAS

Federal Tort Claims Act

federal civil procedure

prisoner litigation

negligence

subject matter jurisdiction

QUESTIONS PRESENTED

1. Whether the magistrate judge improperly treated Romero's FTCA claim as barred by the intentional-tort exception.
2. Whether Romero plausibly alleged all jurisdictional elements of an FTCA claim, including a private-party analogue under Oklahoma law.
3. Whether dismissal should be without prejudice and accompanied by leave to amend.

HOLDINGS

1. The intentional-tort exception did not bar Romero's claim because he alleged that the United States was negligent in failing to prevent an assault, rather than seeking liability solely for the assault itself.
2. Romero failed to establish subject matter jurisdiction because he did not plausibly allege or identify conduct by a private person that would constitute a violation of a duty of care under Oklahoma law in like circumstances.
3. Dismissal was without prejudice, and Romero was granted thirty days to file an amended complaint because the court could not conclude that amendment would necessarily be futile.

KEY QUOTATIONS

“An FTCA claim is actionable if it is: “[1] against the United States, [2] for money damages, . . . [3] for injury or loss of property, or personal injury or death [4] caused by the negligent or wrongful act or omission of any employee of the Government [5] while acting within the scope of his office or employment, [6] under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.””

“Plaintiff has thus failed to carry his burden of establishing this Court’s jurisdiction over his claims.”

FACTUAL BACKGROUND

Anthony J. Romero alleged that his cellmate at the El Reno Federal Correctional Institution attacked him as part of a plot involving Malia Curnutt, a Bureau of Prisons employee. Romero asserted that Curnutt negligently assisted in facilitating the attack and sought monetary damages from the United States under the Federal Tort Claims Act. He relied on Oklahoma law concerning duties to protect persons in custody but did not identify a private-party analogue for the alleged conduct.

PROCEDURAL HISTORY

Romero sued the United States under the Federal Tort Claims Act, alleging that a Bureau of Prisons employee negligently facilitated an assault by Romero's cellmate. The government moved to dismiss under Federal Rule of Civil Procedure 12(b)(1) and (6). Magistrate Judge Suzanne Mitchell recommended dismissal because Romero

failed to identify a sufficient private-party analogue under Oklahoma law. The district court partially adopted the recommendation, dismissed the claims without prejudice, and granted Romero thirty days to amend.

DISPOSITION

dismissed

CASES CITED

- Hall v. Miller, No. CIV-25-00518-JD, 2025 WL 2630738, at *1 (W.D. Okla. Sept. 12, 2025)
- United States v. 2121 E. 30th St., 73 F.3d 1057, 1059-60 (10th Cir. 1996)
- Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991)
- Sheridan v. United States, 487 U.S. 392, 398, 401 (1988)
- United States v. Muniz, 374 U.S. 150 (1963)
- Ashcroft v. Iqbal, 556 U.S. 662, 679 (2009)
- Brownback v. King, 592 U.S. 209, 212, 217-18 (2021)
- FDIC v. Meyer, 510 U.S. 471, 477 (1994)
- Pappas v. United States, 617 F. App'x 879, 882-83 (10th Cir. 2015) (unpublished)
- Miller v. United States, 710 F.2d 656, 662 (10th Cir. 1983)
- United States v. Olson, 546 U.S. 43, 46 (2005)
- Indian Towing Co. v. United States, 350 U.S. 61, 64 (1955)
- Seiler v. City of Bethany, 746 P.2d 699, 700 (Okla. Civ. App. 1987)
- Tyler v. United States, No. CIV-19-01102-JD, 2024 WL 1862324, at *6-7 (W.D. Okla. Apr. 29, 2024)
- Laca v. United States, No. 22-CV-00366-SEH-SH, 2025 WL 2245140, at *4 (N.D. Okla. Aug. 6, 2025)