

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Herrera v. United States

Case No. 24-cv-01409-AJB-LR (S.D. Cal. Apr. 1, 2025) · No. 24-cv-01409-AJB-LR · Decided April 1, 2025

SUMMARY

The United States District Court for the Southern District of California considers Defendants’ motion to dismiss claims arising from alleged warrantless searches, detention, property damage, and related injuries. The court addresses sovereign immunity, the inapplicability of 42 U.S.C. § 1983 to federal agencies and the United States, potential Bivens claims against unidentified DEA agents, the Federal Tort Claims Act, the Bane Act, and service of process. The motion is granted in part and denied in part, with certain claims dismissed with prejudice and leave to amend granted on others.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Anthony J. Battaglia
JURISDICTION	United States District Court for the Southern District of California
DECIDED	April 1, 2025
DOCKET	24-cv-01409-AJB-LR
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff brought constitutional and state-law claims arising from two searches of her home by DEA agents and local law-enforcement officers. The United States, the DEA, and alleged Doe defendants moved to dismiss under Federal Rules of Civil Procedure 12(b)(1), 12(b)(5), and 4(m), asserting sovereign-immunity, subject-matter-jurisdiction, and insufficient-service defenses.
STANDARD OF REVIEW	On a Rule 12(b)(1) motion challenging sovereign immunity and subject-matter jurisdiction, the plaintiff bears the burden of establishing jurisdiction and must plausibly allege a waiver of sovereign immunity. On a Rule 12(b)(5) motion, the plaintiff bears the burden of establishing valid service under Rule 4. The court evaluates the sufficiency of the pleadings under the applicable Rule 12 standards.
PRECEDENTIAL VALUE	unpublished

PARTIES

Griselda Herrera v. United States of America, Drug Enforcement Administration, Does 11-20

TOPICS

motions to dismiss subject matter jurisdiction service of process sovereign immunity section 1983

PRACTICE AREAS

civil procedure civil rights constitutional law sovereign immunity federal tort claims

QUESTIONS PRESENTED

1. Whether the DEA is a person subject to liability under 42 U.S.C. § 1983 and whether Plaintiff alleged action under color of state law.
2. Whether sovereign immunity bars Plaintiff's § 1983 Fourth Amendment claims against the United States.
3. Whether Plaintiff adequately pleaded § 1983 claims against the DEA agents identified as Does 11-20, including whether the claims were timely and sufficiently individualized.
4. Whether assault and false-imprisonment claims against the Doe defendants in official capacity are barred or displaced by the Federal Tort Claims Act.
5. Whether the Bane Act claim is barred by sovereign immunity insofar as it rests on alleged federal constitutional violations and whether it was adequately pleaded.
6. Whether service on the United States and DEA complied with Federal Rule of Civil Procedure 4.
7. Whether the court should permit amendment and extend the time for proper service.

HOLDINGS

1. The DEA is not a person within the meaning of § 1983, and Plaintiff also failed to allege that the DEA acted under color of state law. Plaintiff's § 1983 claims against the DEA were therefore dismissed with prejudice.
2. Sovereign immunity barred Plaintiff's § 1983 Fourth Amendment claims against the United States because the United States has not waived immunity for constitutional torts asserted under § 1983. The claims were dismissed with prejudice, with leave to amend if Plaintiff could proceed under a different legal authority.
3. To the extent Plaintiff asserted assault and false-imprisonment claims against the Doe defendants in their official capacities under the FTCA, the United States was the proper defendant and the individual defendants were immune from suit. Those claims were dismissed with prejudice to the extent premised on the FTCA.
4. Plaintiff failed to allege facts showing that the federal Doe defendants conspired or acted in concert with state officials to a sufficient degree to act under color of state law. The § 1983 claims concerning the

August 11, 2021 incident were time-barred and dismissed with prejudice; claims concerning the September 7, 2022 incident were dismissed without prejudice, with leave to amend.

5. Collective allegations may be sufficient where each Doe defendant is alleged to have engaged in precisely the same conduct, but generalized allegations that fail to differentiate the acts of individual defendants are insufficient.
6. The Bane Act claim was dismissed with prejudice against the United States to the extent it was premised on violations of federal constitutional rights because sovereign immunity was not waived. The claim was also dismissed against Does 11-20 as inadequately pleaded, with leave to amend.
7. Plaintiff did not properly serve either the United States or the DEA because, although she personally delivered the summons and complaint to the U.S. Attorney's Office, she did not also serve the Attorney General and the DEA as required by Rule 4.
8. The court denied the motion to dismiss under Rules 12(b)(5) and 4(m) and directed Plaintiff to effect proper service of any amended complaint.

KEY QUOTATIONS

“The United States is a sovereign, and, as such, is immune from suit unless it has expressly waived such immunity and consented to be sued.” (at 3)

“The DEA, as a federal agency, is not a person within the meaning of the statute.” (at 4)

“There is no flaw in a pleading, however, where collective allegations are used to describe the actions of multiple defendants who are alleged to have engaged in precisely the same conduct.” (at 8)

FACTUAL BACKGROUND

Plaintiff alleged that DEA agents and local officers entered her home without a warrant on August 11, 2021, detained her outside in extreme heat without water, medication, or bathroom access, and damaged property. She further alleged that officers entered again on September 7, 2022, drove an armored vehicle through her fence, damaged her property, confiscated her phone, and caused the death of her cat. Plaintiff alleged that the incidents caused emotional distress and that a newspaper report harmed her reputation and employment prospects; she was not charged with wrongdoing.

PROCEDURAL HISTORY

Imperial County was previously dismissed from the action. The remaining defendants moved to dismiss, Plaintiff opposed, and Defendants replied. The court granted the motion in part, dismissed several claims with prejudice and others without prejudice, granted leave to amend in specified respects, and denied dismissal based on insufficient service because Plaintiff would be permitted to serve an amended complaint.

DISPOSITION

other

CASES CITED

- Dunn & Black, P.S. v. United States, 492 F.3d 1084, 1087-88 (9th Cir. 2007)
- Sato v. Orange County Department of Education, 861 F.3d 923, 927 n.2 (9th Cir. 2017)
- Kokkonen v. Guardian Life Insurance Co. of America, 511 U.S. 375, 377 (1994)
- Robinson v. United States, 586 F.3d 683, 685 (9th Cir. 2009)
- Lee v. United States Department of the Navy, 716 F. Supp. 3d 911, 914 (S.D. Cal. 2024)
- Crowley v. Bannister, 734 F.3d 967, 974-75 (9th Cir. 2013)
- Brockmeyer v. May, 383 F.3d 798, 801 (9th Cir. 2004)
- Jachetta v. United States, 653 F.3d 898, 908 (9th Cir. 2011)
- Ibrahim v. Department of Homeland Security, 538 F.3d 1250, 1257 (9th Cir. 2008)
- West v. Atkins, 487 U.S. 42, 48 (1988)
- Morse v. North Coast Opportunities, Inc., 118 F.3d 1338, 1343 (9th Cir. 1997)
- Brownback v. King, 592 U.S. 209, 217-18 (2021)
- Anderson v. United States, 127 F.3d 1190, 1191 (9th Cir. 1997)
- Cabrera v. Martin, 973 F.2d 735, 742, 744 (9th Cir. 1992)
- Wallace v. Kato, 549 U.S. 384, 387 (2007)
- Mills v. City of Covina, 921 F.3d 1161, 1166 (9th Cir. 2019)
- Gillespie v. Civiletti, 629 F.2d 637, 642 (9th Cir. 1980)
- Lomeli v. County of San Diego, 637 F. Supp. 3d 1046, 1057 (S.D. Cal. 2022)
- M.M. by & Through Ficklin v. Antelope Valley Union High School District, No. 2:24-CV-01338-MEMF-AGR, 2024 WL 4560172, at *8 (C.D. Cal. Oct. 10, 2024)
- United States v. United Healthcare Insurance Co., 848 F.3d 1161, 1184 (9th Cir. 2016)
- Robles v. County of San Diego, No. 23-CV-00898-JES-BLM, 2024 WL 3498497, at *10-*11 (S.D. Cal. July 22, 2024)
- Brink v. County of San Diego, No. 23-CV-01756-DMS-SBC, 2024 WL 3315992, at *5 (S.D. Cal. July 3, 2024)
- Keavney v. County of San Diego, No. 19-CV-01947-AJB-BGS, 2020 WL 4192286, at *5 (S.D. Cal. July 21, 2020)
- M.J. ex rel. Beebe v. United States, 721 F.3d 1079, 1084 (9th Cir. 2013)
- Chaudhry v. City of Los Angeles, 751 F.3d 1096, 1105 (9th Cir. 2014)
- Hughes v. Rodriguez, 31 F.4th 1211, 1224 (9th Cir. 2022)
- S.R. Nehad v. Browder, 929 F.3d 1125, 1142 n.15 (9th Cir. 2019)
- F.D.I.C. v. Meyer, 510 U.S. 471, 478 (1994)
- Romero v. United States, No. 24-CV-1320 JLS (JLB), 2025 WL 897443, at *3-*4 (S.D. Cal. Mar. 24, 2025)
- Peralta v. United States, 475 F. Supp. 3d 1086, 1098 (C.D. Cal. 2020)
- Blanchard v. County of Los Angeles, No. 19CV02438JVSDMF, 2022 WL 17081308, at *3 (C.D. Cal. Aug. 25, 2022)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)

- In re Sheehan, 253 F.3d 507, 513 (9th Cir. 2001)

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