

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA

Teresa Love et al. v. Rachel Pond et al.

Love · No. 2:23-cv-02149-CDS-BNW · Decided December 29, 2025

SUMMARY

The United States District Court for the District of Nevada grants in part the Federal Defendants’ motion to dismiss an action by pro se plaintiffs seeking benefits under the Energy Employees Occupational Illness Compensation Program Act. The court also grants the motion to strike an untimely supplemental brief, denies motions for leave to file a surreply and a jury-trial preservation order, and strikes the plaintiffs’ notices. The court concludes that several asserted statutory and constitutional provisions do not establish jurisdiction or a viable claim, while allowing the First Amendment claim to be amended.

CASE DETAILS

COURT	United States District Court for the District of Nevada
WRITING FOR THE COURT	Cristina D. Silva
JURISDICTION	United States District Court for the District of Nevada
DECIDED	December 29, 2025
DOCKET	2:23-cv-02149-CDS-BNW
DISPOSITION	other
PROCEDURAL POSTURE	Pro se plaintiffs sued federal defendants concerning the denial of survivor benefits under the Energy Employees Occupational Illness Compensation Program. The defendants moved to dismiss under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), and moved to strike an untimely supplemental brief. The court also considered plaintiffs' motions for leave to file a surreply, for a jury-trial preservation order, and two notices.
STANDARD OF REVIEW	On a Rule 12(b)(1) motion, the court may consider evidence outside the pleadings and resolve factual disputes concerning jurisdiction when the jurisdictional issue is separable from the merits. The party asserting jurisdiction bears the burden of establishing it. On a Rule 12(b)(6) motion, the complaint must contain sufficient factual matter, accepted as true, to state a facially plausible claim, and pro se pleadings are liberally construed.

PRECEDENTIAL VALUE	unpublished
PARTIES	Teresa Love, Vietta Hankins v. Rachel Pond, John Vance, Sheldon G. Turley, Jr., Joleen Smith, Gerard O'Hare, Anna DePasquale, Aaron Warren, Jill Mortimer

TOPICS

motions to dismiss

subject matter jurisdiction

administrative procedure act

due process

pleadings

PRACTICE AREAS

civil procedure

administrative law

federal employment law

constitutional law

civil rights

QUESTIONS PRESENTED

1. Whether the court had subject-matter jurisdiction over plaintiffs' claims for benefits, interest, and damages under the APA, EEOICPA, the FTCA, federal-question jurisdiction, the Seventh Amendment, Article III, and federal criminal statutes.
2. Whether the amended complaint stated a claim under the FTCA.
3. Whether plaintiffs stated cognizable First and Fifth Amendment claims under Bivens.
4. Whether plaintiffs were entitled to leave to amend.
5. Whether plaintiffs were entitled to relief from their untimely jury demand.
6. Whether defendants were entitled to strike plaintiffs' untimely supplemental brief and notices.

HOLDINGS

1. The APA does not provide an independent jurisdictional basis and did not authorize plaintiffs' demand for money damages or interest because plaintiffs identified no separate substantive source of law fairly interpreted as mandating compensation by the federal government.
2. The Part E claim was untimely because EEOICPA provides a 60-day deadline for judicial review and the complaint was filed long after the Department of Labor's final decision.
3. Neither the Seventh Amendment nor Article III, Section 2, independently confers subject-matter jurisdiction.
4. Plaintiffs failed to state an FTCA claim and were barred from bringing one because they did not allege timely presentment of an administrative claim before filing suit; the FTCA claim was dismissed with prejudice.
5. The cited criminal statutes did not create private causes of action or confer jurisdiction, so plaintiffs' claims under those statutes were dismissed with prejudice.
6. Plaintiffs' First and Fifth Amendment claims failed as pleaded. The court dismissed them without prejudice and granted leave to amend, while holding that the asserted due-process Bivens theory could not be extended on the allegations presented.

7. Plaintiffs were granted limited leave to file a second amended complaint asserting only First and Fifth Amendment Bivens claims, without adding new claims or defendants.
8. The motion to preserve or obtain a jury trial was denied because plaintiffs waived the jury demand by failing to serve and file it within Rule 38's 14-day period, and the record showed no basis beyond inadvertence for relief.

KEY QUOTATIONS

“The APA “does not provide an independent jurisdictional basis; it only prescribes the standards for reviewing agency action once jurisdiction is otherwise established.”” (at 5)

“The FTCA “allows a plaintiff to bring certain state-law tort suits against the Federal Government.”” (at 8)

“Constitutional amendments themselves do not create direct causes of action.” (at 12)

“The plaintiffs are permitted to file an amended Bivens claims alleging First and Fifth Amendment violations.” (at 15)

FACTUAL BACKGROUND

Teresa Love and Vietta Hankins are sisters whose father, Allen Love, Sr., worked at the Nevada Test Site from 1953 to 1983 and later was diagnosed with non-Hodgkin's lymphoma. The plaintiffs alleged that survivor-benefit claims under Parts B and E of the Energy Employees Occupational Illness Compensation Program were denied or insufficiently awarded, including Teresa's Part E claim based on insufficient evidence that she was a full-time student when her father died. The Department of Labor issued a final decision concerning Teresa's claim no later than July 30, 2015, and plaintiffs sought benefits, interest, damages under criminal statutes, and costs.

PROCEDURAL HISTORY

Plaintiffs initially filed a petition for damages and later filed an amended complaint solely to add their signatures. Defendants moved to dismiss for lack of subject-matter jurisdiction and failure to state a claim. The court granted the motion to dismiss in part, granted the motion to strike, denied leave to file a surreply and the jury-demand motion, struck the notices, and granted leave to amend limited First and Fifth Amendment Bivens claims by January 9, 2026.

DISPOSITION

other

CASES CITED

- Hal Roach Studios v. Richard Feiner & Co., 896 F.2d 1542, 1546 (9th Cir. 1990)
- Harger v. DOL, 569 F.3d 898, 901 (9th Cir. 2009)
- Steel Co. v. Citizens for a Better Environment, 523 U.S. 83, 94-95 (1998)
- McCarthy v. United States, 850 F.2d 558, 560 (9th Cir. 1988)
- Thornhill Publishing Co. v. General Telephone & Electronics Corp., 594 F.2d 730, 733 (9th Cir. 1979)

- Home Depot U.S.A., Inc. v. Jackson, 587 U.S. 435, 438 (2019)
- Republican Party of Guam v. Gutierrez, 277 F.3d 1086, 1088-89 (9th Cir. 2002)
- Franchise Tax Board v. Construction Laborers Vacation Trust, 463 U.S. 1, 8-9 (1983)
- In re Dynamic Random Access Memory (DRAM) Antitrust Litigation, 546 F.3d 981, 984 (9th Cir. 2008)
- Kokkonen v. Guardian Life Insurance Co. of America, 511 U.S. 375, 377 (1994)
- Shapiro v. McManus, 577 U.S. 39, 45-46 (2015)
- Staacke v. U.S. Secretary of Labor, 841 F.2d 278, 282 (9th Cir. 1988)
- Califano v. Sanders, 430 U.S. 99, 106-07 (1977)
- United States v. Mitchell, 463 U.S. 206 (1983)
- Hells Canyon Preservation Council v. U.S. Forest Service, 593 F.3d 923, 932 (9th Cir. 2010)
- Lott v. United States Department of Labor, 2013 U.S. Dist. LEXIS 66969, at *4 (D. Nev. May 9, 2013)
- Great Nature v. Ewing Bros., 2022 WL 575745, at *4 n.37 (D. Nev. Feb. 25, 2022)
- James-Clement v. Lending Connection, Inc., 2008 WL 417993, at *2 (E.D. Wash. Feb. 13, 2008)
- Brownback v. King, 592 U.S. 209, 210, 212 (2021)
- Burns v. United States, 764 F.2d 722, 724 (9th Cir. 1985)
- Jerves v. United States, 966 F.2d 517, 519 (9th Cir. 1992)
- Booth v. United States, 2019 U.S. App. LEXIS 9021, at *7 (9th Cir. Jan. 31, 2019)
- Hung Nguyen v. Yolo County District Attorney's Office, 2021 U.S. Dist. LEXIS 46191, at *4 (E.D. Cal. Mar. 11, 2021)
- Rice v. City and County of San Francisco, 2019 WL 11753722, at *8 n.61 (N.D. Cal. Oct. 19, 2019)
- United States v. Friedland, 83 F.3d 1531, 1539 (3d Cir. 1996)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 570 (2007)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011)
- Wilhelm v. Rotman, 680 F.3d 1113, 1121 (9th Cir. 2012)
- Arpin v. Santa Clara Valley Transportation Agency, 261 F.3d 912, 925 (9th Cir. 2001)
- Daly-Murphy v. Winston, 837 F.2d 348, 355 (9th Cir. 1987)
- Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971)
- Vega v. United States, 881 F.3d 1146, 1153 (9th Cir. 2018)
- Reichle v. Howards, 566 U.S. 658, 663 n.4 (2012)
- McDonald v. Smith, 472 U.S. 479, 482 (1985)
- Smith v. Arkansas State Highway Employees, 441 U.S. 463, 464-65 (1979)
- Ziglar v. Abbasi, 582 U.S. 120, 135 (2017)
- Pettibone v. Russell, 59 F.4th 449, 454 (9th Cir. 2023)
- Egbert v. Boule, 596 U.S. 482, 492 (2022)
- Lanuza v. Love, 899 F.3d 1019, 1023, 1028 (9th Cir. 2018)
- Western Radio Services Co. v. U.S. Forest Service, 578 F.3d 1116, 1120 (9th Cir. 2009)

- Davis v. Passman, 442 U.S. 228, 229 (1979)
- Schweiker v. Chilicky, 487 U.S. 412, 414 (1988)
- Wilkie v. Robbins, 551 U.S. 537, 547-48 (2007)
- Harper v. Nedd, 71 F.4th 1181, 1187 (9th Cir. 2023)
- Brewster v. Board of Education, 149 F.3d 971, 982 (9th Cir. 1998)
- Bowles v. Reade, 198 F.3d 752, 757 (9th Cir. 1999)
- Eldridge v. Block, 832 F.2d 1132, 1135 (9th Cir. 1987)
- Lacey v. Maricopa County, 693 F.3d 896, 928 (9th Cir. 2012)
- Lewis v. Time Inc., 710 F.2d 549, 556-57 (9th Cir. 1983)
- Russ v. Standard Insurance Co., 120 F.3d 988, 990 (9th Cir. 1997)
- Zivkovic v. Southern California Edison Co., 302 F.3d 1080, 1086-87 (9th Cir. 2002)

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