

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PRECEDENTIAL VALUE	unpublished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)

OPINION

Love

PER CURIAM.

1

2 UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

3 4 Teresa Love, et al., Case No. 2:23-cv-02149-CDS-BNW 5 Plaintiffs Order Granting in Part
 Defendants’ Motion to Dismiss and Granting Defendants’ 6 v. Motion to Strike, and Denying
 Plaintiffs’ Motion for Leave to File Surreply and 7 Rachel Pond, et al., Motion for Proposed Order,
 and Order Striking Notices 8 Defendants [ECF Nos. 28, 38, 48, 49, 50, 51] 9 10 Pro se plaintiffs
 Teresa Love and Vietta Hankins are sisters who bring this action against 11 defendants Rachel
 Pond, John Vance, Sheldon G. Turley, Jr., Joleen Smith, Gerard O’Hare, Anna 12 DePasquale,
 Aaron Warren, and Jill Mortimer (collectively, “the Federal Defendants”) alleging 13 that they
 were improperly denied benefits under the Energy Employees Occupational Illness 14
 Compensation Program (EEOICPA). See Am. Compl., ECF No. 20. The Federal Defendants move
 15 to dismiss this action for lack of subject matter jurisdiction and failure to state a claim. See
 Mot. 16 to dismiss, ECF No. 28. The motion to dismiss is fully briefed. See Opp’n, ECF No. 30;
 Reply, 17 ECF No. 33. 18 Also pending before the court is the Federal Defendants’ motion to
 strike the plaintiffs’ 19 untimely supplemental brief to the opposition to the motion to dismiss.
 Mot. to strike, ECF No. 20 38. This motion is also fully briefed. Opp’n, ECF No. 39; Reply, ECF
 No. 47. Finally, the plaintiffs 21 filed a motion for leave to file a surreply to the Federal
 Defendants’ reply brief to the motion to 22 strike, a motion for a jury trial preservation order, and
 two “notices.” ECF Nos. 48–51. The 23 Federal Defendants did not respond to the motions. For
 the reasons set forth herein, I grant the 24 Federal Defendants’ motion to dismiss and their motion
 to strike. I also deny the plaintiffs’ 25 motions to file a surreply and for a jury trial preservation
 order. Finally, I strike the plaintiffs’ 26 notices. 1 I. The allegations in the complaint.1 2 The

plaintiffs brought this case by filing a petition for damages asserting that this court has jurisdiction over this action pursuant to the following statutes: 42 U.S.C. § 7385s-6; 28 U.S.C. § 1331; 28 U.S.C. § 2675; 18 U.S.C. § 1001; 18 U.S.C. § 1922; 5 U.S.C. § 701(a); 5 U.S.C. § 702; 5 U.S.C. § 706; Amendments 1, 5, and 7 to the Bill of Rights; and Article III, Section 2. See ECF No. 20. Therein, the plaintiffs allege the following. Their father, Allen Love, Sr., was an employee

at the Nevada Test Site from 1953–1983. *Id.* at 4. Because of his work at the test site, Allen was diagnosed with non-Hodgkin’s lymphoma. *Id.* Allen passed away on April 18, 1983. *Id.* It is unclear when, but his diagnosis was accepted by the federal government. However, in the “final 10 decisions” issued on December 19, 2003, and December 8, 2006, the claims brought under Part B and E of the EEOICPA were denied. *Id.* At some point, Teresa submitted a survivor claim under the EEOICPA. In January 2018, Teresa received a “Recommended Decision to accept survivor claim under Part B of the EEOICP Act.” *Id.* However, Teresa’s claim under Part E of the Act was denied “due to insufficient evidence of [her] being a full time student at the time of her father’s death.” *Id.* Teresa sought reconsideration of the denial, but that was also denied. *Id.* The plaintiffs then filed a complaint under 29 C.F.R. § 15 and 28 U.S.C. § 2672 with the “Counsel for Complaints and Compensation” on September 29, 2020. *Id.* at 5. The complaint does not set forth any information about when Vietta Hankins filed a claim under the EEOICPA. As relief, the plaintiffs ask this court to order payment of survivor benefits under both Part B and E of EEOICPA, plus interest. *Id.* at 7. They also seek \$250,000 “per defendant” for purportedly using fraudulent statements in violation of 22 U.S.C. § 1001. *Id.* at 7–8. They further seek costs under the Equal Access to Justice Act. *Id.* at 9. Plaintiffs filed an amended complaint on February 27, 2025, to include their signatures on the last page of the complaint. Compare ECF No. 1 with ECF No. 20. All other allegations are the same. Because the allegations are the same, I nonetheless address the motion to dismiss but cite to the amended complaint herein because it is the operative one. See *Hal Roach Studios v. Richard Feiner & Co.*, 896 F.2d 1542, 1546 (9th Cir. 1990) (“[A]n amended pleading supersedes the original.”). The court refers to Allen Love, Sr. and or Teresa Love by their first names. This is done for clarity and convenience and is not intended to convey disrespect. 1 II. About the EEOICPA

2 In 2000, Congress passed the Energy Employees Occupational Illness Compensation

3 Program Act,³ which established a program to compensate individuals who were diagnosed 4 with certain illnesses because of their exposure to radiation and other toxic substances while 5 working for the Department of Energy (DOE). See 42 U.S.C. §§ 7384, 7384d. Under “Part B” of 6 EEOICPA, covered employees or their eligible survivors may receive compensation in a lump 7 sum payment of \$150,000 plus medical benefits for covered individuals. 42 U.S.C. § 7384s; see 8 generally *id.* §§ 7384l to 7384w-1. “Part E” of the Act provides compensation for permanent 9 impairments or wage loss to DOE contractor employees with a covered illness in the form a 10 variable lump sum payment. See 42 U.S.C. §§ 7385s-1–2. 11 Generally, to file a claim, either the

individual or the survivor must file a claim with the 12 Department of Labor's Office of Worker's Compensation Program (OWCP). See 20 C.F.R. §§ 13 30.100, 30.101 (2019); *Harger v. DOL*, 569 F.3d 898, 901 (9th Cir. 2009) (discussing the process for 14 filing a claim). If a claim lacks the required supporting factual or medical evidence, OWCP 15 notifies the claimant of the deficiencies and provides an opportunity for correction of the 16 deficiencies. 20 C.F.R. § 30.111(b). Once a claim has been sufficiently developed, the OWCP will 17 issue a Recommended Decision informing the claimant of its recommended findings of fact and 18 conclusions of law. See 20 C.F.R. §§ 30.300, 30.305–.308. The claimant then has 60 days to file 19 written objections to the Recommended Decision with the Final Adjudication Branch (FAB) 20 within OWCP. 20 C.F.R. § 30.310. 21 If a claimant is dissatisfied with the final decision issued by FAB, they may request 22 reconsideration within 30 days. 20 C.F.R. § 30.319(a). If FAB denies the reconsideration request, 23 the Recommended Decision will be considered final on the date the request for reconsideration 24 is denied. 20 C.F.R. § 30.319(c)(2). But the opportunity to appeal does not end there. Even after 25 the FAB has issued a final decision on a claim, a claimant may file a written request with the 26 342 U.S.C. §§ 7384 to 7385s-15. 1 Director of OWCP's Division of Energy Employees Occupational Illness Compensation to 2 reopen a claim. 20 C.F.R. § 30.320(b). The request to reopen must be based upon either the 3 submission of new evidence of a diagnosed medical condition, covered employment, or exposure 4 to a toxic substance, or identification of changes in HHS' guidelines, methodologies, and 5 classifications pertinent to the adjudication of cancer claims. *Id.* Ultimately, if the Director 6 decides that the evidence submitted or matter raised by the request is material to the claim, the 7 claim can be reopened⁴ and returned to the district office for any necessary, further 8 development. *Id.* A new Recommended Decision is issued at the conclusion of that reopening 9 process. *Id.* 10 III. Discussion 11 The Federal Defendants seek dismissal of this action pursuant to Rules 12(b)(1) and 12 12(b)(6) of the Federal Rules of Civil Procedure. See ECF No. 28. Because jurisdiction is a 13 threshold issue, I address that first. See *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94–95 14 (1998) (discussing jurisdiction as a threshold requirement that is “inflexible and without 15 exception.”); see also Fed. R. Civ. P. 12(h)(3) (“If the court determines at any time that it lacks 16 subject matter jurisdiction, the court must dismiss the action.”). 17 A. The Federal Defendants motion to dismiss pursuant to FRCP 12(b)(1) for lack of subject matter jurisdiction is granted in part. 18 19 Under Rule 12(b)(1), a complaint must be dismissed for lack of subject matter 20 jurisdiction. Fed. R. Civ. P. 12(b)(1). Unlike a motion under Rule 12(b)(6), “when considering a 21 motion to dismiss pursuant to Rule 12(b)(1), the district court is not restricted to the face of the 22 pleadings, but may review any evidence, such as affidavits and testimony, to resolve factual 23 disputes concerning the existence of jurisdiction.” *McCarthy v. United States*, 850 F.2d 558, 560 24 (9th Cir. 1988); see also *Thornhill Pub. Co., Inc. v. General Tel. & Electronics Corp.*, 594 F.2d 730, 733 (9th 25 26 4 The Director's decision to reopen a claim, or deny a request to do so, is completely discretionary. See 20 C.F.R. § 30.320(c).

1 Cir. 1979) (“Where the jurisdictional issue is separable from the merits of the case, the judge may
2 consider the evidence presented with respect to the jurisdictional issue and rule on that issue, 3
resolving factual disputes if necessary.”). Congress granted federal courts jurisdiction over two 4
general types of cases: cases that arise under federal law, pursuant to 28 U.S.C. § 1331; and cases
5 where the amount in controversy exceeds \$75,000 and there is diversity of citizenship among 6
the parties, pursuant to 28 U.S.C. § 1332(a). These jurisdictional grants are known as “federal- 7
question jurisdiction” and “diversity jurisdiction,” respectively. See *Home Depot U. S. A., Inc. v. 8*
Jackson, 587 U.S. 435, 438 (2019).⁵ 9 A case “arises under” federal law (federal question
jurisdiction) either where federal law 10 creates the cause of action or “where the vindication of a
right under state law necessarily 11 turn[s] on some construction of federal law.” *Republican Party*
of Guam v. Gutierrez, 277 F.3d 1086, 12 1088–89 (9th Cir. 2002) (quoting *Franchise Tax Bd. v.*
Constr. Laborers Vacation Trust, 463 U.S. 1, 8–9 13 (1983)). The presence or absence of federal-
question jurisdiction is governed by the “well- 14 pleaded complaint rule,” which provides that
federal jurisdiction only exists when a federal 15 question is presented on the face of the plaintiff’s
properly pleaded complaint.” *Id.* at 1089. 16 If a federal court determines that it lacks subject
matter jurisdiction at any time, it must 17 dismiss the action. See Fed. R. Civ. P. 12(h)(3). The
party asserting jurisdiction bears the burden 18 of establishing subject matter jurisdiction.” In re
Dynamic Random Access Memory (DRAM) Antitrust 19 Litig., 546 F.3d 981, 984 (9th Cir. 2008)
(citing *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 20 377 (1994)). 21 As threshold
matter, the plaintiffs respond to the motion to dismiss for lack of subject 22 matter jurisdiction by
summarily asserting there is jurisdiction under 28 U.S.C. § 1331 because 23 the claims arise under
the Constitution and federal law. See ECF No. 30 at 2. This is insufficient 24 to survive a Rule
12(b)(1) motion. See *Shapiro v. McManus*, 577 U.S. 39, 45–46 (2015) (“Absent a 25 26 5 The
complaint does not allege diversity jurisdiction, and based on the allegations in the complaint, it
would not apply so it is not addressed herein. 1 substantial federal question,” a district court lacks
subject matter jurisdiction, and claims that 2 are “wholly insubstantial” are insufficient to “raise a
substantial federal question for 3 jurisdictional purposes”). Moreover, the Local Rule 7-2(d) state
that “[t]he failure of an 4 opposing party to file points and authorities in response to any motion,
except a motion under 5 Fed. R. Civ. P. 56 or a motion for attorney’s fees, constitutes a consent to
the granting of the 6 motion.” LR 7-2(d). Although the court could grant the Federal Defendants
motion to dismiss 7 on jurisdictional grounds based on the plaintiffs’ insufficient response, I am
cognizant of the 8 plaintiffs’ pro se status,⁶ so I nonetheless address the arguments on the merits.
The plaintiffs are 9 cautioned, however, that they must comply with all the rules of this court,
including the Local 10 Rules.⁷ 11 The Federal Defendants first argue that the plaintiffs’
Administrative Procedures Act 12 (APA) claim for payment of interest under Part B of the
EEOCIPA should be dismissed for lack 13 of subject matter jurisdiction. ECF No. 28 at 9–10. I
agree. The APA provides that a “person 14 suffering legal wrong because of agency action, or

adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.” 5 U.S.C. 16 § 702. The APA “does not provide an independent jurisdictional basis; it only prescribes the standards for reviewing agency action once jurisdiction is otherwise established.” *Staacke v. U.S. Secretary of Labor*, 841 F.2d 278, 282 (9th Cir. 1988) (holding that the APA “was not intended as an independent jurisdictional foundation” (citing *Califano v. Sanders*, 430 U.S. 99, 106–07 (1977))).

Section 706 of the APA does “grant[] federal courts the power to ‘compel agency action unlawfully withheld or unreasonably delayed.’” However, that power is limited to “situations where an agency has ignored a specific legislative command.” *Hells Canyon Pres. Council v. U.S. Forest Serv.*, 593 F.3d 923, 932 (9th Cir. 2010) (citations omitted); see also 5 U.S.C. § 706. There are no 6 Because the plaintiffs are pro se, the court liberally construes the amended complaint and resolves all 25 doubts in the plaintiffs’ favor. See *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010). 7 A copy of the Local Rules are available in the United States Clerk’s Office for the District of Nevada, or 26 online at <https://www.nvd.uscourts.gov/wp-content/uploads/2020/04/Local-Rules-of-Practice-Amended-2020.pdf>. 1 allegations or substantive claims identified in the complaint that would confer jurisdiction for 2 this court to order the United States to pay money damages to the plaintiffs under the APA. To 3 successfully bring a complaint under the APA, a plaintiff must identify a separate source of 4 substantive law (claim, statute or otherwise) that “can fairly be interpreted as mandating 5 compensation by the Federal Government for the damages sustained.” *U.S. v. Mitchell*, 463 U.S. 6 206 (1983) (discussing the 28 U.S.C. § 1491, otherwise known as the Tucker Act). The plaintiffs 7 fail to identify a separate source of law that would permit this money-damages demand to 8 proceed, and Part B of the EEOCIPA does not provide for this sort of recovery. See EEOICPA Part 9 B, NWIA, <https://nuclearworkers.org/eeoicpa-part-b/> (last visited Dec. 19, 2025).8 So these 10 allegations cannot confer federal question jurisdiction, nor can the plaintiffs bring a claim under 11 this provision.9 12 Second, the motion also argues that the plaintiffs’ claim under Part E of the EEOCIPA 13 should be dismissed for lack of subject matter jurisdiction. ECF No. 20 at 12–13. They argue that 14 this claim cannot survive because it’s akin to a request for judicial review of Teresa’s Part E 15 claim. See *id.* at 12. Unlike the plaintiffs’ claim under Part B, EEOCIPA’s Part E does grant subject 16 matter jurisdiction to review decisions rendered under this provision. See 42 U.S.C. § 7385s-6(a). 17 But, as noted by the Federal Defendants, that statute has a strict 60-day filing deadline. See *Lott v. United States Dep’t of Labor*, 2013 U.S. Dist. LEXIS 66969, at *4 (D. Nev. May 9, 2013) (citing *Barrie* 19 20 21 8 I take judicial notice of this website without converting this motion into one for summary judgment. Generally, “district courts may not consider material outside the pleadings when assessing the 22 sufficiency of a complaint under Rule 12(b)(6) . . .” *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 998 (9th Cir. 2018) (citing *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001)). But a court may take 23 judicial notice of matters of public record, *Khoja*, 899 F.3d at 999 (quoting *Lee*, 250 F.3d at 689), and of

“documents whose contents are alleged in a complaint and whose authenticity no party questions, but 24 which are not physically attached to the pleading,” *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994) (overruled on other grounds); see also Fed. R. Evid. 201. Government websites are also available for 25 judicial notice so long as “neither party disputes the authenticity of the [website] or the accuracy of the information displayed therein.” *Daniels-Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992, 998–99 (9th Cir. 2010)). 26 9 For the same reason, these allegations also fail to state a cognizable claim under Rule 12(b)(6), so the Federal Defendants’ motion to dismiss under that rule is also granted. 1 *v. United States DOL*, 805 F. Supp. 2d 1140, 1144 (D. Colo. 2011)). DOL issued its final decision to 2 Teresa on July 30, 2015. 3 Third, the complaint alleges that that the Federal Defendants violated the plaintiffs’ 4 rights under the Seventh Amendment to the Bill of Rights and Article III, Section 2, of the U.S. 5 Constitution. But these assertions also fail to confer jurisdiction. The Seventh Amendment 6 provides that “[i]n Suits at common law, where the value in controversy shall exceed twenty 7 dollars, the right of trial by jury shall be preserved.” U.S. Const. amend. VII. The Seventh 8 Amendment, however, “does not confer on this court subject-matter jurisdiction,” and courts do 9 not have jurisdiction over suits at common law simply because the value involved in the action is 10 more than \$20. See *Great Nature v. Ewing Bros.*, 2022 WL 575745, at *4 n.37 (D. Nev. Feb. 25, 2022) 11 (“[T]he Seventh Amendment preserves the right to a jury trial; it does not confer on this court 12 subject-matter jurisdiction.”); see also *James-Clement v. Lending Connection, Inc.*, 2008 WL 417993, at 13 *2 (E.D. Wash. Feb. 13, 2008) (“The Seventh Amendment does not provide subject matter 14 jurisdiction; rather, a plaintiff must establish a basis for federal jurisdiction before his right to a 15 jury trial can be invoked.”). Article III, Section 2, of the U.S. Constitution likewise does not 16 confer jurisdiction; that section outlines judicial power and therefore is not a basis to confer 17 jurisdiction. See U.S. Const. art. III, § 2. Thus, the plaintiffs’ reliance on these sections do not 18 confer jurisdiction and are hereby dismissed with prejudice.10 19 Fourth, the Federal Defendants argue that the plaintiffs fail to articulate a claim under 28 20 U.S.C. § 2675, otherwise known as the Federal Tort Claims Act (FTCA). The FTCA “allows a 21 plaintiff to bring certain state-law tort suits against the Federal Government.” *Brownback v. King*, 22 592 U.S. 209, 210 (2021) (citations omitted). To prevail on an FTCA claim, the plaintiff must 23 show that the claim is (1) against the United States; (2) for money damages; (3) for injury or loss 24 of property, or personal injury or death; (4) caused by the negligent or wrongful act or omission 25 26 10 For the same reasons, these allegations also fail to state a claim under FRCP 12(b)(6), so the Federal Defendants’ motion to dismiss under that rule is also granted. 1 of any federal government employee; (5) while the employee was acting within the scope of their 2 office or employment; (6) under circumstances where the United States, if a private person, 3 would be liable to the claimant in accordance with the law of the place where the act or 4 omission occurred. *Id.* at 212. The complaint is devoid of any allegations setting forth a state law 5 claim, so this claim fails. 6 This claim also fails because a claim brought under the FTCA requires any claimant to 7 first file a claim with the appropriate federal agency and await

final denial before commencing a civil action—in other words, the claimant must first exhaust their administrative remedies. 28 U.S.C. § 2675(a); *Burns v. United States*, 764 F.2d 722, 724 (9th Cir. 1985). This exhaustion requirement is mandatory and cannot be waived. See *Jerves v. United States*, 966 F.2d 517, 519 (9th

11 Cir. 1992). Actions filed prior to presentation of the claim to the agency, final denial of the claim

12 by the agency, or allowing six months to elapse from the date of filing of the administrative claim fail to meet this requirement and are properly dismissed for lack of subject matter jurisdiction. See *id.* Thus, under the FTCA, claims must be filed by a plaintiff with the responsible agency within two years of the accrual of the claim. 28 U.S.C. § 2401(b); see *Booth v. United States*, 2019 U.S. App. LEXIS 9021, at *7 (9th Cir. Jan. 31, 2019). Here, the complaint has no allegations that the plaintiffs filed an administrative claim before bringing this action, and any accrual would have run in March 2023. See ECF No. 20 at 4 (stating that the Final Decision was issued on March 21, 2018). The Federal Defendants filed an affidavit showing that no claim was filed by the plaintiffs. See Defs.’ Ex. A, Naji decl., ECF No. 21 28-2. The plaintiffs then brought this action in December 2023. Without filing a timely administrative claim, the plaintiffs are now barred from bringing an FTCA claim. Consequently, the plaintiffs’ FTCA claim fails, and the Federal Defendants’ motion to dismiss pursuant to Rule 12(b)(6) is granted with prejudice. Fifth, the Federal Defendants argue that the plaintiffs cannot rely on 18 U.S.C. §§ 1001, 1018, and 1922 to confer jurisdiction because those are criminal statutes with no private right of action. ECF No. 28 at 9. I agree. Each of these statutes are ones that do not confer a private right of action. See *Hung Nguyen v. Yolo Cnty. Dist. Attorney’s Office*, 2021 U.S. Dist. LEXIS 46191, at *4 (E.D. Cal. Mar. 11, 2021), report and recommendation adopted, 2021 U.S. Dist. LEXIS 72405 (Apr. 14, 2021) 6 (“[T]o the extent the complaint raises claims for false statements and fraud under 18 U.S.C.

7 Sections 1001 and 1031, plaintiff, as a private citizen, has no authority to bring claims under 8 criminal statutes.”); *Rice v. City & Cnty. of San Francisco*, 2019 WL 11753722, at *8 n.61 (N.D. Cal.

9 Oct. 19, 2019) (18 U.S.C. §§ 1001 and 1018 did not create a private cause of action)); see also *United*

10 *States v. Friedland*, 83 F.3d 1531, 1539 (3rd Cir. 1996) (“[T]he United States Attorney is responsible 11 for the prosecution of all criminal cases within his or her district.”). The plaintiffs, as private 12 citizens, cannot bring claims under these statutes, and they fail to confer jurisdiction and are 13 hereby dismissed with prejudice. 14 B. The Federal Defendants motion to dismiss pursuant to FRCP 12(b)(6) for failing to state a claim is granted. 15 16 Under Rule 12(b)(6), a party may bring a motion to dismiss for failure to state a claim 17 upon which relief can be granted. Rule 12(b)(6) must be read in conjunction with Federal Rule 8(a), which requires a “short and plain statement of the claim showing that a 19 pleader is entitled to

relief” in order to give the defendant “fair notice of what the claim is and the grounds upon which it rests.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). To survive a Rule 12(b)(6) dismissal, “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant 25 26 11 For the same reasons, these allegations also fail to state a claim under FRCP 12(b)(6), so the Federal Defendants’ motion to dismiss under that rule is also granted. 1 is liable for the misconduct alleged.” *Id.* at 678. While “detailed factual allegations” are not 2 required, “an unadorned, the-defendant-unlawfully-harmed-me accusation,” “labels and 3 conclusions,” or “naked assertion[s] devoid of further factual enhancement” are insufficient to 4 defeat a motion to dismiss. *Id.* (quotations omitted). The Ninth Circuit has clarified that (1) a 5 complaint must “contain sufficient allegations of underlying facts to give fair notice and to 6 enable the opposing party to defend itself effectively,” and (2) “the factual allegations that are 7 taken as true must plausibly suggest an entitlement to relief, such that it is not unfair to require 8 the opposing party to be subjected to the expense of discovery and continued litigation.” *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011). Where a plaintiff is appearing pro se, courts construe 10 pleadings liberally and afford the plaintiff any benefit of the doubt. *Wilhelm v. Rotman*, 680 F.3d 11 1113, 1121 (9th Cir. 2012). 12 Further, the complaint also alleges violations of the plaintiffs’ constitutional rights under 13 the First and Fifth Amendments of the U.S. Constitution. See ECF No. 20 at 2–3. Constitutional 14 amendments themselves do not create direct causes of action. *Arpin v. Santa Clara Valley Transp. 15 Agency*, 261 F.3d 912, 925 (9th Cir. 2001). A plaintiff may bring an action under 42 U.S.C. § 1983 16 for “the deprivation of any rights, privileges, or immunities secured by the Constitution” against 17 a person acting “under color of any statute, ordinance, regulation, custom, or usage, of any 18 State,” however there is no “basis for a claim under section 1983, [because the plaintiffs’] 19 allegations are against federal officials acting under color of federal law.” *Daly-Murphy v. Winston*, 20 837 F.2d 348, 355 (9th Cir. 1987). So I liberally construe the amended complaint as attempting to 21 bring claims under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). However, here, any potential *Bivens* claim fails. 12 Again, the plaintiffs fail to substantively 23 12 Expanding *Bivens* is a “‘disfavored’ judicial activity.” *Ziglar v. Abbasi*, 582 U.S. 120, 135 (2017) (citation 24 omitted). To determine if a *Bivens* remedy is available in a particular case, courts apply a two-step analysis. *Pettibone v. Russell*, 59 F.4th 449, 454 (9th Cir. 2023). First, courts determine whether the case 25 presents ‘a new *Bivens* context.’” *Egbert v. Boule*, 596 U.S. 482, 492 (2022). If the answer is “no,” then no further analysis is required, and the claim may proceed. See *Lanuza v. Love*, 899 F.3d 1019, 1023 (9th Cir. 26 2018). But if the answer is “yes,” then the court proceeds to step two, *id.*, and the court must ask whether an “‘alternative, existing process for protecting’ the plaintiff’s interests” is available, *W. Radio Servs. Co. v. 1 support their position that dismissal*

of these claims would be improper. Instead, they 2 summarily contend that they can seek damages under Bivens.¹³ See ECF No. 30 at 2. This is 3 insufficient, and therefore grounds to grant the Federal Defendants' motion. See LR 7-2(b). 4 First, "[t]he Supreme Court has never explicitly recognized a Bivens remedy for a First 5 Amendment claim." *Vega v. United States*, 881 F.3d 1146, 1153 (9th Cir. 2018) (citing *Reichle v. Howards*, 566 U.S. 658, 663 n.4 (2012) ("We have never held that Bivens extends to First 7 Amendment claims.")). Thus, the plaintiffs' claim under the First Amendment is not a cognizable 8 Bivens claim. But even if it were, I would still grant the motion because the amended complaint 9 fails to state a claim. The First Amendment provides that Congress shall make no law abridging 10 the right of the people "to petition the Government for redress of grievances," a right that is "cut 11 from the same cloth" as the other guarantees in the First Amendment. *McDonald v. Smith*, 472 U.S. 12 479, 482 (1985). It is "an assurance of a particular freedom of expression." *Id.* The Petition Clause 13 guarantees only that an individual may "speak freely and petition openly," and to guarantee that 14 such individuals will be free from retaliation by the government for doing so. *Smith v. Arkansas State Highway Employees*, 441 U.S. 463, 464–65 (1979) (per curiam). The amended complaint does 16 not state any allegations that could give rise to a potential violation of their rights under the 17 First Amendment. So this claim is dismissed without prejudice and with leave to amend. 18 19 20 U.S. Forest Serv., 578 F.3d 1116, 1120 (9th Cir. 2009) (citation omitted), or whether other "special factors" 21 counsel against such expansion by the judiciary. *Lanuza*, 899 F.3d at 1028. 13 The plaintiffs filed a supplement to their opposition to the motion to dismiss, addressing the purported 22 Bivens claims. See ECF No. 38. Their opposition was due May 23, 2025, making this supplement untimely. It was also filed without leave of court in violation of Local Rule 7-2(g). See LR 7-2(g) (stating that a 23 party may not file supplemental pleadings, briefs, authorities, or evidence without leave of court granted for good cause). That same rule says the judge may strike supplemental filings made without leave of 24 court. Because the supplement was filed untimely and without leave of court, the Federal Defendants' motion to strike the brief [ECF No. 38] is granted. Further, the plaintiffs' motion for leave to file a 25 surreply [ECF No. 48] is denied. The court notes that this motion violates LR LC 2-2(b), which requires 26 parties to file separate documents for each type of relief requested. This motion contained several requested forms of relief. 1 The plaintiffs' Fifth Amendment claim, which I construe as alleging a procedural due 2 process violation, also fails. The Supreme Court has repeatedly rejected extending Bivens to due 3 process violations. See, e.g., *Ziglar*, 582 U.S. 120; *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). The Ninth 5 Circuit has also rejected extending this sort of claim. See *Harper v. Nedd*, 71 F.4th 1181, 1187 (9th

6 Cir. 2023). I see no reason to deviate from the reasoning set forth in those decisions, especially 7 based on the sparse allegations in the amended complaint. 8 Even if Bivens somehow applies, this claim would still be dismissed because procedural 9 due process claims require plaintiffs to

show they were (1) deprived of a constitutionally 10 protected liberty or property interest, and (2) denied adequate procedural protections. *Brewster v. Bd. of Educ.*, 149 F.3d 971, 982 (9th Cir. 1998). While the first element is arguably met for Teresa, 12 the amended complaint is devoid of allegations that would support the second element—an 13 alleged denial of procedural protections. Rather, the allegations show that Teresa had access to 14 procedures to apply for benefits under the EEOICPA and to appeal the decision denying her 15 application. See ECF No. 20 at 6–7. There are no allegations explaining how Vietta Hankin’s 16 Fifth Amendment rights were violated. Accordingly, the plaintiffs have failed to state a claim, so 17 this claim is also dismissed without prejudice and with leave to amend. 18 C. Leave to amend

19 Rule 15(a) provides that “[t]he court should freely give leave [to amend] when justice so 20 requires,” and there is a strong public policy in favor of permitting amendment. *Bowles v. Reade*, 21 198 F.3d 752, 757 (9th Cir. 1999). And the policy of favoring amendments under Rule 15(a) “is 22 applied even more liberally to pro se litigants” than to parties represented by counsel. *Eldridge v. Block*, 23 832 F.2d 1132, 1135 (9th Cir. 1987). Applying that rule here, the court finds good cause to 24 grant the plaintiffs leave to amend for some of their claims. 25 26 1 The plaintiffs are permitted to file an amended Bivens claims alleging First and Fifth 2 Amendment violations. If the plaintiffs elect to file the amended complaint, it must be filed 3 by January 9, 2026, and it must be titled “Second Amended Complaint.” The plaintiffs are 4 advised that an amended complaint supersedes the original complaint and, thus, the amended 5 complaint must be complete in and of itself. *Hal Roach Studios*, 896 F.2d at 1546; see also *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir. 2012) (holding that for claims dismissed with 7 prejudice, a plaintiff is not required to reallege such claims in a subsequent amended complaint 8 to preserve them for appeal). 9 However, the plaintiffs are not permitted to bring any new claims or name any new 10 defendants. Further, the plaintiffs cannot re-allege any claims under 18 U.S.C. §§ 1001, 1018, and 11 1922 or an FTCA claim under 28 U.S.C. § 2675 because they have been dismissed with prejudice. 12 D. The plaintiffs’ motion for jury demand is denied. 13 The plaintiffs filed a “motion to enter a proposed jury trial preservation order.” See ECF

14 No. 49.14 The Federal Defendants did not file a response to this motion. I nonetheless address the

15 motion on the merits because the Federal Rules and binding authority controls whether I should 16 grant this request. 17 Federal Rule of Civil Procedure 38(b) governs the timing for demanding a jury trial in 18 federal civil proceedings. Under this rule, “a party may demand a jury trial by . . . filing the 19 demand in accordance with Rule 5(d).” The demand must be made “no later than 14 days after 20 the last pleading directed to the issue is served.” Fed. R. Civ. P. 38(b)(1). A party who fails to 21 “properly serve and file a jury demand” waives a jury trial. See Fed. R. Civ. P. 38(d). 22 23 14 Relatedly, the plaintiffs also filed a “Notice of Constitutional Issue” and a “Notice of Plaintiffs’ Filing Package.” ECF Nos. 50, 51. The court construes the “Notice of Constitutional Issue” as a duplicate 24 request for a jury trial demand. See ECF No. 51. Because this “notice” is a

rogue filing, and because the court resolves this issue by addressing the plaintiffs' motion for jury demand (ECF No. 49), this "notice" 25 is stricken. The second notice, regarding the filing package (ECF No. 50), is stricken as a rogue filing. The court docket reflects what was filed so the "notices" of filings are not necessary. The plaintiffs are advised 26 that any "request for a court order must be made by motion," Fed. R. Civ. P. 7(b)(1), not through "notices." 1 In this circuit, a district court's discretion to order a jury trial on a motion by a party who 2 has not filed a timely demand is "narrow," and it "does not permit a court to grant relief when 3 the failure to make a timely demand results from an oversight or inadvertence." *Lewis v. Time Inc.*, 4 710 F.2d 549, 556–57 (9th Cir. 1983); *Russ v. Standard Ins. Co.*, 120 F.3d 988, 990 (9th Cir. 1997) 5 ("[T]he district court is not permitted under Rule 39(b) to excuse an inadvertent failure to 6 request a jury trial.") 7 Here, the plaintiffs initially waived their right to a jury trial by not serving the Jury 8 Demand within 14 days after filing their complaint or after the Federal Defendants filed their 9 Answer. The plaintiffs do not address the untimeliness of their request, so there is no 10 information or evidence before the court explaining plaintiffs' untimely demand. See ECF No. 49. 11 Without more, this court cannot grant the plaintiffs' request, so it is denied. See *Zivkovic v. S. Cal. Edison Co.*, 12 302 F.3d 1080, 1086–87 (9th Cir. 2002) (finding that even a pro se litigant's good faith 13 mistake as to the deadline to demand a jury trial established "no more than inadvertence, which 14 is not a sufficient basis to grant relief from an untimely jury demand"). 15

III. Conclusion 16 IT IS THEREFORE ORDERED that the defendants' motion to dismiss [ECF No. 28] is 17 GRANTED in part. 18 IT IS FURTHER ORDERED that the defendants' motion to strike [ECF No. 38] is 19 GRANTED. The Clerk of Court is kindly directed to strike ECF No. 37. 20 IT IS FURTHER ORDERED that the plaintiffs' motion for leave to file a surreply and 21 motion for jury trial [ECF Nos. 48, 49] are DENIED. 22 IT IS FURTHER ORDERED that the plaintiffs' "notices" [ECF Nos. 50, 51] are 23 STRICKEN. 24 IT IS FURTHER ORDERED that if the plaintiffs elect to file an amended complaint, they 25 have until January 9, 2026 to do so, and it must be titled "Second Amended Complaint." If the 26 plaintiffs do not file a Second Amended Complaint by that date, this action will be subject to 1|| dismissal without prejudice for failing to follow a court order. Further, the plaintiffs are reminded that they are not permitted to bring any new claims or name any new defendants, and 3|| they cannot re-allege any claims under 18 U.S.C. §§ 1001, 1018, and 1922 or an FTCA claim under 28 U.S.C. § 2675 because they are dismissed with prejudice. Failure to comply with this order 5|| may also subject this action to dismissal for failing to follo a court order. 6 Dated: December 29, 2025 // 8 Cri Kae 9 U States District Judge / 10 ll 12 13 4 15 16 17 18 19 20 21 22 23 24 25 26 16