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FEB 12 2009

CLERM U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

Juan Carlos Valadez Lopez,)	ED CV 07-1566-RSWL
)	
)	
Plaintiff,)	ORDER GRANTING Defendant
)	United States of
vs.)	America's Motion to
)	Dismiss for Failure to
Michael Chertoff, et al.,)	State a Cause of Action
)	Upon Which Relief Can Be
Defendant.)	Granted, and for Lack of
)	Subject Matter
)	Jurisdiction

Valadez Lopez v. Chertoff et al

Doc. 114

Defendant United States of America's ("Defendant")
Motion to Dismiss for Failure to State a Cause of
Action Upon Which Relief Can Be Granted, and for Lack
of Subject Matter Jurisdiction was set for hearing on
January 30, 2009. Having taken the matter under
submission on January 26, 2009, and having reviewed all
papers submitted pertaining to this motion the Court,
NOW FINDS AND RULES AS FOLLOWS:

1 Defendant's Motion to Dismiss for Failure to State
2 a Cause of Action Upon Which Relief Can Be Granted, and
3 for Lack of Subject Matter Jurisdiction is **GRANTED WITH**
4 **PREJUDICE.**

5
6 28 U.S.C. § 2675(a) of the FTCA states,

7
8 An action shall not be instituted upon a claim
9 against the United States ... unless the claimant
10 shall have first presented the claim to the
11 appropriate Federal agency and his claim shall have
12 been finally denied by the agency in writing and
13 sent by certified or registered mail.

14 In other words, an FTCA claim may not be brought until
15 the plaintiff has exhausted all administrative
16 remedies. McNeil v. United States, 508 U.S. 106, 113
17 (1993). Courts strictly construe this requirement
18 because "[s]overeign immunity is an important
19 limitation on the subject matter jurisdiction of
20 federal courts. The United States, as sovereign, can
21 only be sued to the extent it has waived its sovereign
22 immunity." Vacek v. United States Postal Serv., 447
23 F.3d 1248, 1250-1251 (9th Cir. 2006). "[Courts] have
24 repeatedly held that the exhaustion requirement [of the
25 FTCA] is jurisdictional in nature and must be
26 interpreted strictly... Any such waiver must be
27 strictly construed in favor of the United States." Id.

28 Where a plaintiff has prematurely initiated an FTCA
claim before exhausting administrative remedies, courts

1 must dismiss the FTCA claim. Moreover, Courts have
2 consistently refused to allow plaintiffs to amend a
3 dismissed, premature FTCA claim after exhausting their
4 administrative remedies. Instead, plaintiffs must
5 initiate a new cause of action for the FTCA claim. See
6 Duplan v. Harper, 188 F.3d 1195, 1199 (10th Cir. Okla.
7 1999) (amended complaint filed after exhaustion cannot
8 cure a prematurely filed original complaint); Sparrow
9 v. USPS, 825 F. Supp. 252, 254-55 (E.D. Cal. 1993)
10 (same); Przysiecki v. Eifert, 2007 U.S. Dist. LEXIS
11 82049, *8-7 (S.D. Cal. Nov. 2, 2007) (same).

12
13 Plaintiff's original Complaint did not specifically
14 state an FTCA claim.¹ After Plaintiff exhausted his
15 administrative remedies under the FTCA, he amended his
16 Complaint to state an FTCA claim against the United
17 States. Thus, the issue is whether or not Plaintiff,
18 who has now exhausted his administrative remedies, can
19 add an FTCA claim into his pre-exhaustion Complaint.²

20
21 _____
22 ¹ Defendant's original complaint asserted other
23 state and federal law violations against other parties
24 (not the United States).

25
26 ² In other words, whether or not Plaintiff will
27 have to initiate a new suit for his FTCA claim, or they
28 can go forward as part of his initial causes of action.

1 Federal courts have consistently insisted that
2 plaintiffs exhaust their legal remedies prior to
3 bringing an FTCA claim because FTCA claims are only
4 possible to the extent the United States has waived its
5 sovereign immunity. Therefore, this Court strictly
6 construes the exhaustion requirement to prevent
7 Plaintiff from amending his Complaint to add an FTCA
8 claim where amendment causes the FTCA claim to be
9 prematurely filed prior to exhaustion. One other
10 district court, Boatwright v. Chipi, 2008 WL 819315,
11 *15 (S.D. Ga. March 26, 2008), addressed the same issue
12 before the Court and found that the plaintiff could not
13 add an FTCA claim into a pre-exhaustion cause of
14 action.³ The Court stated that Plaintiff would have to
15 file a separate cause of action. In Boatwright the
16 court stated,

17
18 The Court cannot allow Plaintiff to circumvent
19 clear jurisdictional requirements by permitting him
20 to proceed in this case with the claims asserted in
21 his Amended Complaint when, at the time Plaintiff
filed his original Complaint, the Court lacked
subject matter jurisdiction to entertain his FTCA
claims.

22 Boatwright, 2008 WL 819315 at *15. Applying this
23 rationale, Plaintiff's FTCA claim is dismissed since he
24 had not exhausted his administrative remedies at the
25 time he brought his original Complaint, regardless of
26

27 ³ The Court found that Plaintiff would have to
28 file a separate cause of action for his FTCA claims.

