

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

May 5, 2020

Lyle W. Cayce
Clerk

No. 20-10018
Summary Calendar

RICHARD A. CHICHAKLI,

Plaintiff - Appellant

v.

UNITED STATES OF AMERICA; OFAC, United States Department of Treasury and its Office of Foreign Assets Control; FBI, United States Department of Justice including the Federal Bureau of Investigation; DEA; UNITED STATES ATTORNEY IN THE SOUTHERN DISTRICT OF NEW YORK; URS CORPORATION FEDERAL SERVICE DIVISION OF RIVERSIDE CALIFORNIA; THERESA NEWMAN; MICHAEL DONDARSKI, Assistant Director of Enforcement OFAC; JUSTICE MANAGEMENT DIVISION; FEDERAL TORT CLAIMS ACT SECTION, Tort Branch US DOJ,

Defendants - Appellees

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:19-CV-372

Before DAVIS, SMITH, and HIGGINSON, Circuit Judges.

PER CURIAM:*

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Richard Chichakli, proceeding pro se, appeals the district court's dismissal of his claims against the United States brought under the Federal Tort Claims Act and the Fourth, Fifth, and Fourteenth Amendments of the Constitution. We affirm.

I.

In July 2004, President George W. Bush issued Executive Order No. 13388, Blocking Property of Certain Persons and Prohibiting the Importation of Certain Goods from Liberia.¹ The Office of Foreign Assets Control ("OFAC") determined that Chichakli was acting in the United States on behalf of an international arms dealer, and blocked his property under the executive order. Chichakli unsuccessfully challenged the blocking order in several lawsuits,² and he was ultimately convicted of three counts of conspiracy to violate the political economic sanctions imposed on him.³ Chichakli's assets were unblocked under a 2015 executive order,⁴ and he regained possession of at least some of his assets in 2017 after he was released from prison.

Here, Chichakli sued the United States, mainly under the Federal Tort Claims Act, alleging theft, negligence, and other tort claims for the alleged loss or mishandling of his property by the OFAC. The district court dismissed for lack of jurisdiction, finding that (1) Chichakli failed to present an appropriate administrative tort claim under the Federal Tort Claims Act ("FTCA") before filing suit; (2) the Court of Federal Claims has exclusive jurisdiction over his takings claim; and (3) no waiver of sovereign immunity allowed Chichakli to proceed on his Fourth or Fourteenth Amendment claims.

¹ Exec. Order No. 13348, 69 Fed. Reg. 44885 (July 22, 2004).

² See *Chichakli v. Szubin*, 2007 WL 9711515 (N.D. Tex. June 4, 2007); *aff'd in part, vacated in part*, 546 F.3d 315 (5th Cir. 2008); *Chichakli v. Obama*, 2014 WL 6755680 (D.D.C. Nov. 25, 2014), *aff'd in part, vacated in part*, 617 F. App'x 3 (D.C. Cir. 2015).

³ *United States v. Chichakli*, 2014 WL 5369424 (S.D.N.Y. Oct. 16, 2014).

⁴ Exec. Order No. 13710, 80 Fed. Reg. 71, 679 (Nov. 12, 2015).

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A. Federal Tort Claims Act

Before filing suit under the FTCA, a plaintiff must “first present[] the claim to the appropriate Federal agency.”⁵ This requirement “allow[s] the federal agency promptly to investigate and, if appropriate, settle claims without having to resort to federal courts.”⁶ To serve that goal, presentment requires submission of the claim to the appropriate agency for a “sum certain.”⁷ This requirement is jurisdictional.⁸

Chichakli argues that several letters he mailed to OFAC satisfied the presentment requirement. The first letter, written in June 2017, did not include a sum certain. Instead, the letter explains that a total of \$2.2 million worth of assets were seized in 2005, and that some—but not all—of those assets were returned to him. Chichakli did not value his claim at \$2.2 million. He does not appear to seek the entire value of all assets seized in 2005, and he admits that some of the assets were returned to him.

Chichakli sent another letter to OFAC in 2018. In an email attached to that letter, Chichakli explained that the letter contained only a “partial list of my claims against OFAC” and that “This is not a complete list awaiting the finalization of the final compilation of accounting and records.” An incomplete list intended to be supplemented is not a “sum certain.”⁹ Accordingly, the district court did not err in holding that Chichakli failed to exhaust his administrative remedies because he did not present a claim for a sum certain.

⁵ 28 U.S.C. § 2675(a).

⁶ *Pleasant v. U.S. ex rel. Overton Brooks Veterans Admin. Hosp.*, 764 F.3d 445, 449 (5th Cir. 2014).

⁷ 28 C.F.R. § 14.2(a).

⁸ *Cook v. United States*, 978 F.2d 164, 165-66 (5th Cir. 1992).

⁹ *See, e.g., Montoya v. United States*, 841 F.2d 102, 105 (5th Cir. 1988) (“Ms. Montoya fails to suggest a dollar sum for any of the three minor passengers; to the contrary, the letter promised more detail once medical examinations were accomplished”); *Flores v. United States*, 719 F. App’x 312, 319 (5th Cir. 2018) (“Flores’s attached 2013 administrative claim form provided the phrase ‘will supplement’”).

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B. Takings Claim

The Court of Federal Claims has exclusive jurisdiction over takings claims that exceed \$10,000.¹⁰ As noted by the district court, Chichakli clearly seeks more than \$10,000 in damages for property that he alleged was lost or stolen by the government. And, as noted by the district court, Chichakli did not attempt to disclaim damages in excess of \$10,000 in his complaint. Accordingly, the district court did not err in dismissing this claim for lack of jurisdiction.

C. Fourth and Fourteenth Amendment Claims

Similarly, the district court correctly held that it lacked jurisdiction over Chichakli's Fourth and Fourteenth Amendment claims. The United States is immune from suit unless it waives its sovereign immunity.¹¹ The FTCA does not waive sovereign immunity for the constitutional tort claims Chichakli asserts.¹²

D. Other Parties

Finally, the district court dismissed without prejudice Chichakli's claims against other named parties for failure to effect proper service. Chichakli does not challenge those dismissals on appeal. Accordingly, the district court's without-prejudice dismissal against those parties is affirmed.

II.

For these reasons, and the thorough reasons assigned in the findings, conclusions, and recommendations of the magistrate judge (and accepted by the district court), we AFFIRM the judgment of the district court.

¹⁰ *Eastern Enters. v. Apfel*, 524 U.S. 498, 520 (1998).

¹¹ *FDIC v. Meyer*, 510 U.S. 471, 475 (1994).

¹² See *United States v. \$4,480,466.16 in Funds Seized from Bank of Am. Account Ending in 2653*, 942 F.3d 655, 664 (5th Cir. 2019).