

UNITED STATES COURT OF APPEALS  
for the Fifth Circuit

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No. 93-2721  
Summary Calendar

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JOHN JENORIKI,

Plaintiff-Appellant,

VERSUS

U. S. POSTAL INSPECTION SERVICE, ETC., ET AL,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Southern District of Texas  
(CA-H-92-85)

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(May 23, 1994)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:<sup>1</sup>

Appellant, Jenoriki, proceeding pro se and in forma pauperis, sued the United States Postal Inspection Service of Houston, Texas (USPS) and the Federal Bureau of Investigation of Houston, Texas (FBI) alleging mail tampering in numerous ways, delaying mail deliveries, refusing to return registered mail receipts to him, stealing contracts and patent designs from his mail, and tearing his mail; conspiracy to tamper with the mail; violation of his constitutional right to protected use of the U.S. mail under the 9th Amendment; and conducting a warrantless search by tampering

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<sup>1</sup> Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

with his mail in order to silence his criticism of the Pentagon and the Navy. He asked for injunctive relief and damages.

The USPS and the FBI moved to dismiss under Federal Rule of Civil Procedure 12(b) or, alternatively, for summary judgment. The district court dismissed Jenoriki's claims ruling that sovereign immunity deprived it of subject matter jurisdiction over the USPS and the FBI. The court also held that, insofar as Jenoriki may be attempting to sue under the Federal Tort Claims Act (FTCA), he had not exhausted administrative remedies, a jurisdictional prerequisite to suit. Although plaintiff had not named any individual defendants, the district court determined that "the § 1983 individual claims against Duffin and Brown must be dismissed on the ground of qualified immunity." It also denied Jenoriki's motion to add the Texas Department of Human Services (TDHS) as a defendant. The court gave him 30 days "to replead consistent with this order." Plaintiff did not "replead" and instead appealed. We affirm.

The United States is immune from suit absent a waiver. Interfirst Bank Dallas, N.A. v. United States, 769 F.2d 299, 303 (5th Cir. 1985), cert. denied, 475 U.S. 1081 (1986). The FBI, as an agency of the United States, is entitled to sovereign immunity. See Williamson v. United States Dept. of Agricultural, 815 F.2d 368, 380 (5th Cir. 1987); Castleberry v. Alcohol, Tobacco & Firearms Div. of Treasury Dept., 530 F.2d 672, 674 (5th Cir. 1976).

A constitutional claim does not arise under the [FTCA] and is barred by sovereign immunity. McAfee v. 5th Circuit Judges, 884

F.2d 221, 223 (5th Cir. 1989), cert. denied, 493 U.S. 1083 (1990). The mail-tampering and conspiracy statutes cited in Jenoriki's complaint are criminal provisions that do not waive sovereign immunity and do not create a private right of action. See §§ 241 and 1703.

The sovereign immunity of the USPS has been waived only to the extent of the FTCA. Insurance Co. of North America v. United States Postal Service, 675 F.2d 756, 758 (5th Cir. 1982). Jenoriki admits that his is not a tort claim and that the FTCA is inapplicable. Thus, Jenoriki has not shown that the sovereign immunity of the FBI and the USPS has been waived.

Jenoriki is correct that the district court, for reasons unclear from the record, analyzed his suit as also naming two individual defendants. These individuals were not named in his complaint and made no appearance. The error is harmless.

Appellant argues that the district court erred in issuing a protective order so that defendants would not have to answer Jenoriki's interrogatories. The district court correctly dismissed Jenoriki's suit against the USPS and the FBI, as a matter of law, thus there was no need for discovery. The district court did not err in issuing the protective order.

Jenoriki argues that the district court erred in denying his motion to amend his complaint to add the Texas Department of Human Services, Food Stamp Office (TDHS), as a defendant. Appellant sought to attack TDHS's alleged misuse of food stamps and energy-assistance benefits.

This Court reviews the denial of leave to amend for an abuse of discretion. Whitaker v. Houston, 963 F.2d 831, 836 (5th Cir. 1992). The district court denied Jenoriki's motion on the ground of futility. If the proposed amendment would have offered the plaintiff no means of redress, there was no reason to allow amendment. Davis v. United States, 961 F.2d 53, 57 (5th Cir. 1991). The Texas Department of Human Services is immune from suit; the Eleventh Amendment bars such claims. Cronen v. Texas Dept. of Human Services, 977 F.2d 934, 938, 940 (5th Cir. 1992). The district court did not abuse its discretion.

Appellant moved this Court for a restraining order to enjoin the FBI from interfering and tampering with his home telephone service. An application for an injunction during the pendency of an appeal "must ordinarily be made in the first instance in the district court." Fed. R. App. P. 8(a). If the motion is made to this Court, "the motion shall show that application to the district court for the relief sought is not practical, or that the district court has denied an application, or has failed to afford the relief which the applicant requested, with the reasons given by the district court for its action." Id.

Jenoriki has not applied to the district court for the injunctive relief sought in this Court and has not shown that it was not practical for him to do so. Therefore, the motion is denied.

Judgment of the district court AFFIRMED.

Motion DENIED.