No. 19-_____

In The
SUPREME COURT OF THE UNITED STATES

JAMES NATHANIEL DOUSE,
Petitioner,
vs.

THE UNITED STATES OF AMERICA,
DEPARTMENT OF THE NAVY
ADAM BAIN (Department of Justice, Attorney),
Respondent.

On Petition for a Writ of Certiorari

To The United States Court of Appeals for the Eleventh Circuit

These case-initiating Questions are governed by Supreme Court Rule 11.

MOTION FOR LEAVE TO Proceed as a VETERAN Pursuant to

SUPREME COURT RULE 40 ; and

Statutes 38 U.S.C. § 4323(h)(1); 38 U.S.C.§§ 4301-4335

PETITIONER'S DECLARATION to Proceed as a VETERAN.

Pursuant to Supreme Court Rule 40. Veterans, Seamen, and Military Cases, I Petitioner, James Nathaniel Douse, on behalf of myself declare as follows:—

1). This Petitioner is an **Honorable Discharged Disabled Veteran** from Active Duty Military Service, United States Marine Corps, DD214 Attach.

2). This Petitioner Active Duty Service was at Camp Geiger, a Base inside of Marine Corps Base Camp Lejeune.

3). Petitioner seeks to proceed on papers prepared as required by Rule 33.2. and Submitting Documents under Supreme Court Rule 33.2

4). Pursuant to 38 U.S.C.§§ 4301-4335, This provision of law exempts veterans from the payment of fees or court costs.

5). This Petitioner Resides in the State of Tennessee.

6). This Petitioner have a valid State of Tennessee mailing address.

Respectfully Submitted

Date March 18, 2019

JAMES NATHANIEL DOUSE
718 THOMPSON LANE
BLDG 108 UNIT 124
NASHVILLE, TENNESSEE 37204
JAMESCNET90@OUTLOOK.COM
615-848-4415

THIS IS AN IMPORTANT RECORD
SAFEGUARD IT.

1. LAST NAME - FIRST NAME - MIDDLE NAME	2. SEX	3. SOCIAL SECURITY	4. DATE OF BIRTH	YEAR	MONTH	DAY
DOUSE, James Nathaniel	M	[redacted] 0552		56	12	[redacted]

5. DEPARTMENT, COMPONENT AND BRANCH OR CLASS	6a. GRADE, RATE OR RANK	b. PAY GRADE	7. DATE OF RANK	YEAR	MONTH	DAY
USMC-11	Corporal	E-4		75	10	02

8a. SELECTIVE SERVICE NUMBER	b. SELECTIVE SERVICE LOCAL BOARD NUMBER, CITY, STATE AND ZIP CODE	c. HOME OF RECORD AT TIME OF ENTRY INTO ACTIVE SERVICE (Street, RFD, City, State and ZIP Code)
Unknown	Unknown	[redacted] Broward, FL 33060

9a. TYPE OF SEPARATION	b. STATION OR INSTALLATION AT WHICH EFFECTED
Release from active duty	CoL 3rdBn,8thMar,2ndMarDiv(Rein),FMF

c. AUTHORITY AND REASON	d. EFFECTIVE DATE	YEAR	MONTH	DAY
MRI 3		76	11	10

e. CHARACTER OF SERVICE	f. TYPE OF CERTIFICATE ISSUED	10. REENLISTMENT CODE
Honorable	None	RE-1A

11. LAST DUTY ASSIGNMENT AND MAJOR COMMAND	12. COMMAND TO WHICH TRANSFERRED
CoL 3rdBn,8thMar,2ndMarDiv(Rein),FMF,CamLej	MCRFAA

13. TERMINAL DATE OF RESERVE/MSS OBLIGATION YEAR	MONTH	DAY	14. PLACE OF ENTRY INTO CURRENT ACTIVE SERVICE (City, State and ZIP Code)	15. DATE ENTERED ACTIVE DUTY THIS PERIOD YEAR	MONTH	DAY
80	11	12	Jacksonville, FL	74	11	12

16a. PRIMARY SPECIALTY NUMBER AND TITLE	b. RELATED CIVILIAN OCCUPATION AND D.O.T. NUMBER	18. RECORD OF SERVICE	YEARS	MONTHS	DAYS
Rifleman 0311	Proof director Small arms 199.168	(a) NET ACTIVE SERVICE THIS PERIOD	01	11	29
		(b) PRIOR ACTIVE SERVICE	00	00	00
17a. SECONDARY SPECIALTY NUMBER AND TITLE	b. RELATED CIVILIAN OCCUPATION AND D.O.T. NUMBER	(c) TOTAL ACTIVE SERVICE (a + b)	01	11	29
		(d) PRIOR INACTIVE SERVICE	00	00	00
None	Not Applicable	(e) TOTAL SERVICE FOR PAY (c + d)	01	11	29
		(f) FOREIGN AND/OR SEA SERVICE THIS PERIOD	01	03	07

19. INDOCHINA OR KOREA SERVICE SINCE AUGUST 5, 1964	20. HIGHEST EDUCATION LEVEL SUCCESSFULLY COMPLETED (In Years)
☐ YES ☒ NO	SECONDARY/HIGH SCHOOL 12 YRS (1-12 grades) COLLEGE 00 YRS

21. TIME LOST (Preceding Two Yrs)	22. DAYS ACCRUED LEAVE PAID	23. SERVICEMEN'S GROUP LIFE INSURANCE COVERAGE	24. DISABILITY SEVERANCE PAY	25. PERSONNEL SECURITY INVESTIGATION a. TYPE	b. DATE COMPLETED
None	11.0	☐ $15,000 ☐ $5,000 X$20,000 ☐ $10,000 ☐ NONE	☒ NO ☐ YES AMOUNT N/A	ENTNAC	740708

26. DECORATIONS, MEDALS, BADGES, COMMENDATIONS, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED

Rifle Expert Badge

27. REMARKS

Good Conduct Medal period commences 741112

Camp Lejeune Marine Base

28. MAILING ADDRESS AFTER SEPARATION (Street, RFD, City, County, State, ZIP)	29. SIGNATURE OF PERSON BEING SEPARATED
See item 6c	James N. Douse
30. TYPED NAME, GRADE AND TITLE OF AUTHORIZING OFFICER	31. SIGNATURE OF OFFICER AUTHORIZED TO SIGN
R. P. ADELHELM, 1stLt, EXECO	R. P. Adelhelm

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 16-17573
Non-Argument Calendar

D.C. Docket No. 1:11-md-02218-TWT

In Re: CAMP LEJEUNE, NORTH CAROLINA WATER CONTAMINATION LITIGATION.

LEANDRO PEREZ, et al.,

Plaintiffs,

ANDREW STRAW,
JAMES NATHANIEL DOUSE,
ERICA Y. BRYANT,
ROBERT BURNS,
DANIEL J. GROSS, II,
ROBERT PARK,
SHARON KAY BOLING,
LINDA JONES,
ESTELLE RIVERA,

Plaintiffs-Appellants,

versus

UNITED STATES OF AMERICA,
DEPARTMENT OF THE NAVY,
United States of America,
ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY,

DIVISION DIRECTOR, DEPARTMENT OF ENVIRONMENTAL PROTECTION AGENCY,
DEPARTMENT OF DEFENSE,
SECRETARY OF THE NAVY,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia

(May 22, 2019)

Before TJOFLAT, MARTIN and NEWSOM, Circuit Judges.

PER CURIAM:

Andrew Straw, James Douse, Erica Bryant, Robert Burns, Daniel Gross, Robert Park, Sharon Boling, Linda Jones, and Estelle Rivera (collectively, "Plaintiffs") appeal the District Court's dismissal of their actions alleging that the Government negligently injured them by providing contaminated water while they inhabited Marine Corps Base Camp Lejeune in the 1970s and 1980s.

On appeal, Plaintiffs argue that the District Court committed four errors. First, they argue that the District Court erred in determining that their claims are barred by the discretionary-function exception to the Federal Tort Claims Act ("the FTCA"), 28 U.S.C. § 2680(a). Second, they argue that the District Court erred in determining that North Carolina's ten-year statute of repose bars their claims.

Third, they argue that the District Court erred in determining that the *Feres*[1] doctrine bars their claims, as their injuries were not incidental to their military service. Fourth and finally, Plaintiff Straw argues that the District Court abused its discretion by denying his motion for default judgment because the Government failed to respond to his pleading.

Because we hold that North Carolina's ten-year statute of repose applies to and bars Plaintiffs' claims, we affirm the District Court's judgment without reaching the FTCA, *Feres* doctrine, and default judgment issues.

I.

We review *de novo* the District Court's granting of a motion to dismiss. *See Zelaya v. United* States, 781 F.3d 1315, 1321 (11th Cir. 2015).

In this case's prior interlocutory appeal, we held that "North Carolina's statute of repose, N.C. Gen. Stat. § 1-52(16) (2010), applies to the plaintiffs' claims, and it does not contain an exception for latent diseases." *Bryant v. United States*, 768 F.3d 1378, 1385 (11th Cir. 2014). Plaintiffs now argue that this Court clearly erred in deciding *Bryant*. Even if Plaintiffs are correct—which they are not[2]—it is axiomatic that "a prior panel's holding is binding on all subsequent

[1] *Feres v. United States*, 340 U.S. 135, 71 S. Ct. 153 (1950).

[2] In *Stahle v. CTS Corp.*, 817 F.3d 96 (4th Cir. 2016), the Fourth Circuit addressed the same question we confronted in *Bryant*. Though the Fourth Circuit reached a different conclusion, one member of the panel went out of her way to note that "[t]he Supreme Court of North Carolina itself has sent mixed signals about the scope of § 1-52(16)." *Id.* at 114 (Thacker, J., concurring). What's more, the four federal circuit courts that have interpreted § 1-52(16)

panels unless and until it is overruled or undermined to the point of abrogation by the Supreme Court or by this court sitting *en banc*." *In re Lambrix*, 776 F.3d 789, 794 (11th Cir. 2015) (per curiam) (quoting *United States v. Archer*, 531 F.3d 1347, 1352 (11th Cir. 2008)). Neither the Supreme Court nor this Court sitting *en banc* has overruled *Bryant*, so its holding remains good law.

In addition to arguing squarely against precedent, Plaintiffs now contend that a six-year statute of repose—that is, *not* the ten-year "statute of repose that has been at issue for the entirety of this litigation,"[3] but another one—applies to their claims. The new statute of repose provides that "[n]o action to recover damages based upon or arising out of the defective or unsafe condition of an improvement to real property shall be brought more than six years from the later of the specific last act or omission of the defendant giving rise to the cause of action." N.C. Gen. Stat. § 1-50(a)(5)(a). Plaintiffs would rather be subject to the six-year statute of repose because it contains an exception for defendants who are "in actual possession or control . . . of the improvement at the time the defective or unsafe condition constitutes the proximate cause of the [plaintiff's injury]." *Id.* § 1-50(a)(5)(d).

---

have expressed "different views of the statute's scope." *Id.* (collecting cases). Given the difficulty of this question and the diversity of interpretations it has produced, Plaintiffs' suggestion that we plainly erred in *Bryant* is plainly misguided.

[3] *In re Camp Lejeune N.C. Water Contamination Litig.*, 263 F. Supp. 3d 1318, 1336 (N.D. Ga. 2016).

Plaintiff Rivera[4] contends that this six-year statute of repose applies because she "alleged that [her] injuries arose out of the defective and unsafe conditions of improvement to real property" at Camp Lejeune. Rivera Br. at 9–10. The problem with this argument is that Rivera's allegations are conclusory, and "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions." *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949 (2009).

Section 1-50(a)(5), the six-year statute of repose, "deals expressly with claims arising out of defects in improvement to realty caused by the performance of specialized services of designers and builders." *Trs. of Rowan Tech. Coll. v. J. Hyatt Hammond Assocs., Inc.*, 328 S.E.2d 274, 279–80 (N.C. 1985). "In order for this statute to apply, . . . the party sued must have been involved in the designing, planning, or construction of the defective or unsafe improvement." *Feibus & Co. v. Godley Constr. Co.*, 271 S.E.2d 385, 391 (N.C. 1980). It is, "in essence, an architect's and builder's malpractice statute." *Trs. of Rowan Tech. Coll.*, 328 S.E.2d at 280. So to be subject to this statute of repose rather than the ten-year statute of repose, Plaintiffs were required to allege defects in the design or construction of the wells at Camp Lejeune. Bryant and Wright do not do so.

[4] Three Plaintiffs—Bryant, Wright, and Rivera—argue that the causes of action pleaded in their complaints subject their claims to the six-year statute of repose. None of them is correct, but Plaintiff Rivera advances the strongest argument, so we use it as an example.

And—though she advances the strongest argument—neither does Rivera. The closest Rivera comes to alleging a construction defect is when she claims that over-pumping of the base's water wells, in addition to deficient maintenance and inspection, caused the wells to become "defective and unsafe." Rivera Br. at 17. But this is conduct that allegedly occurred *after* the construction of the wells, and thus cannot support a claim that the wells were defectively designed or constructed.

II.

As we held five years ago, Plaintiffs' claims are subject to the ten-year statute of repose under N.C. Gen. Stat. § 1-52(16). The wells at issue in this case were taken out of use in 1987, and the earliest claim by a Plaintiff was made in 1999—two years after the statute of repose had cut off Defendants' liability.

AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-12179-FF

JAMES NATHANIEL DOUSE,

Plaintiff - Appellant,

versus

ELEVENTH CIRCUIT COURT OF APPEALS CLERK OF COURTS, et al.,

Defendants,

ADAM BAIN,
in his individual capacity,

Defendant - Appellee.

Appeal from the United States District Court
for the Northern District of Georgia

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: WILLIAM PRYOR, GRANT and HULL, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petition for Rehearing En Banc is also treated as a Petition for Rehearing before the panel and is DENIED. (FRAP35, IOP 2).

ENTERED FOR THE COURT:

/s/ FRANK M. HULL
UNITED STATES CIRCUIT JUDGE

ORD-42

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-12179
Non-Argument Calendar

D.C. Docket No. 1:18-cv-00847-TWT

JAMES NATHANIEL DOUSE,

Plaintiff-Appellant,

versus

ELEVENTH CIRCUIT COURT OF APPEALS CLERK OF COURTS, et al.,

Defendants,

ADAM BAIN,
in his individual capacity,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Georgia

(January 24, 2019)

Before WILLIAM PRYOR, GRANT and HULL, Circuit Judges.

PER CURIAM:

Plaintiff James Nathaniel Douse brought this pro se civil lawsuit against defendants Adam Bain, a Department of Justice ("DOJ") attorney, and the United States seeking damages after attorney Bain publicly disclosed Douse's medical records and personally-identifiable information on the district court's docket during a separate lawsuit. The district court granted the defendants' motions to dismiss the complaint, concluding, among other things, that Douse's claims were barred by the doctrine of res judicata and that Bain was entitled to immunity. On appeal, Douse challenges those conclusions and also disputes the validity of the United States' certification that attorney Bain was acting within the scope of his federal employment at the time of the unlawful disclosure. After careful review of the record and the parties' briefs, we affirm.

I. BACKGROUND FACTS

A. Disclosure of Medical and Personal Information

Separate from this case, plaintiff Douse is involved in a multidistrict litigation against the United States, in which he and other service members and their families allege they were injured after being exposed to toxic substances in the water supply while living at Marine Corps Base Camp Lejeune in North Carolina. See In re Camp Lejeune N.C. Water Contamination Litig., 263 F. Supp.

3d 1318, 1325 (N.D. Ga. 2016). During that litigation, on February 4, 2016, DOJ attorney Bain filed an opposition to Douse's motion to amend his complaint, in which Bain submitted an exhibit containing 17 pages of documents that Douse had sent to the Department of Navy in support of his administrative claim regarding his exposure to contaminated water. The 17 pages of documents included Douse's medical records and certain personally-identifiable information, such as his date of birth, social security number, and home address (collectively, "medical and personal information"). As a consequence, Douse's medical and personal information was available on the district court's public docket for just over one month. See id. at 1361-62.

In response, on March 8, 2016, Douse filed a motion for punitive and exemplary damages, arguing that the disclosure of his medical and personal information violated the Health Insurance Portability and Accountability Act and tort laws. Id. at 1361-62. The government responded that the disclosure was inadvertent and immediately asked the district court to remove the entire exhibit from the court's public docket. Id. at 1362. The government then submitted a corrected exhibit that did not include Douse's medical records and redacted his personally-identifiable information as required by Federal Rule of Civil Procedure 5.2.

On December 5, 2016, the district court denied Douse's request for punitive and exemplary damages because "any exposure of information was inadvertent and for only a brief period of time." Id. The court also dismissed all of the claims brought by the plaintiffs in the Camp Lejeune litigation. Id. at 1365. An appeal from the final judgment in that case is pending in this Court.

B. Two Prior Lawsuits Predicated on this Disclosure

Meanwhile, on September 30, 2016, Douse filed a pro se civil action against DOJ attorney Bain in Georgia state court. In that complaint, he alleged common-law tort claims and a constitutional claim under the Fourth Amendment, based on Bain's wrongful disclosure of Douse's medical and personal information during the Camp Lejeune litigation.

The government removed the state action to the federal district court for the Northern District of Georgia, pursuant to the Westfall Act, 28 U.S.C. § 2679(d)(2), which provides that, if the Attorney General certifies that a tort claim against a federal employee is premised on actions taken within the scope of his employment, (1) any civil action commenced on that claim in state court "shall be removed . . . at any time before trial" to federal district court, (2) the United States is substituted as the defendant, and (3) the case proceeds under the Federal Tort Claims Act ("FTCA"). See 28 U.S.C. § 2679(d)(2). However, the United States

may not be substituted as a defendant when a claim "is brought for a violation of the Constitution." 28 U.S.C. § 2679(b)(2).

As such, after the United States certified that Bain was acting in his capacity as a government attorney when he disclosed Douse's medical and personal information, the case was removed to the federal district court and the United States was substituted as the defendant for all of Douse's claims against Bain, except for Douse's Fourth Amendment constitutional claim.

Ultimately, on December 30, 2016, the district court dismissed the complaint under Federal Rule of Civil Procedure 12(b)(6). First, the district court dismissed the Fourth Amendment claim against Bain because (1) Bain was not properly served with the complaint, (2) he was entitled to qualified immunity, and (3) an improper disclosure of private information cannot form the basis of a Fourth Amendment violation. The court dismissed the remaining claims against the United States because the complaint was an improper "shotgun pleading" that failed to comply with Federal Rules of Civil Procedure 8 and 10. The court also dismissed the complaint for lack of subject matter jurisdiction because Douse suffered no injury from the disclosure of his medical and personal information because he "waived his privacy rights" in the records by voluntarily submitting them as proof of his personal injuries in the Camp Lejeune lawsuit. Douse

appealed from this order, but this Court dismissed the appeal for want of prosecution.

A few days after filing his civil action in state court, on October 4, 2016, Douse filed another lawsuit in federal district court predicated on the same disclosure of his medical and personal information by attorney Bain. This time, Douse filed a pro se FTCA personal injury action against the United States, alleging that the United States wrongly placed that information onto the docket in the Camp Lejeune litigation.

On January 6, 2017, the district court dismissed this second complaint under Rule 12(b)(6) as well. As in the other lawsuit, the district court concluded that Douse failed to allege an injury based on the inadvertent disclosure of his medical and personal information. This Court dismissed Douse's appeal from this order for want of prosecution too.

C. The Present Civil Action

That brings us to the instant civil action, which is Douse's third pro se lawsuit based on DOJ attorney Bain's inadvertent disclosure of his medical and personal information during the Camp Lejeune litigation. On February 1, 2018, Douse filed a complaint in Georgia state court against the United States and Bain,

alleging that Bain's filing violated his Fourth Amendment right to privacy, as well as various federal statutes and state law provisions.[1]

Invoking the Westfall Act again, the United States certified that attorney Bain was acting in the scope of his federal employment at the time of the incident out of which Douse's claims arose and removed the case to the federal district court in the Northern District of Georgia. And, as in his prior lawsuit, the United States was substituted as defendant for all of Douse's claims, except for his Fourth Amendment claim against Bain.

Both the United States and Bain then moved to dismiss the complaint asserting, among other things, that Douse's claims were barred by res judicata because they were litigated in the prior actions.

The district court granted the motions to dismiss. As to the United States, the district court concluded that the FTCA claims were barred by the statute of limitations and that all of Douse's claims against the United States were barred by claim preclusion, as they were a "rehash of two nearly identical complaints filed by [Douse] in 2016 and dismissed by this [c]ourt." Similarly, the district court concluded that the claims against Bain were foreclosed by the immunity granted in the Westfall Act, except for the Fourth Amendment claim, and the entire action

[1]Douse also named as defendants the Eleventh Circuit Clerk of Court and the Northern District of Georgia Clerk of Court. At Douse's request, the district court dismissed those defendants from the case.

was barred by res judicata because it was based on Bain's same disclosure of medical and personal information as in Douse's prior lawsuits. The district court noted as well that Douse "does not complain of any search or seizure in any constitutionally-recognized sense" and the disclosure of information already in the government's hands does not constitute a Fourth Amendment violation.

II. STANDARD OF REVIEW

The district court's Rule 12(b)(6) dismissal is subject to plenary review. Lane v. Philbin, 835 F.3d 1302, 1305 (11th Cir. 2016). The district court's application of res judicata is a question of law which we review de novo. Griswold v. Cty. of Hillsborough, 598 F.3d 1289, 1292 (11th Cir. 2010). Additionally, we review de novo questions of statutory interpretation. United States v. DBB, Inc., 180 F.3d 1277, 1281 (11th Cir. 1999).

III. DISCUSSION

A. Westfall Act Certification

On appeal, plaintiff Douse challenges the validity of the United States' statutory certification that Bain was acting within the scope of his employment when he improperly disclosed Douse's medical and personal information. According to Douse, the scope-of-employment certification filed in his case is insufficient because the Westfall Act requires that certification to be made by the Attorney General. Here, the certification was done by James G. Touhey, Jr., the

Director of the Torts Branch of the Civil Division of the DOJ, and not the Attorney General. This argument is unavailing.

"The Federal Employees Liability Reform and Tort Compensation Act of 1988, commonly known as the Westfall Act, accords federal employees absolute immunity from common-law tort claims arising out of acts they undertake in the course of their official duties." Osborn v. Haley, 549 U.S. 225, 229, 127 S. Ct. 881, 887 (2007). When a federal employee is sued for wrongful conduct, the statute empowers the Attorney General to certify that the employee "was acting within the scope of his office or employment at the time of the incident out of which the claim arose." 28 U.S.C. § 2679(d)(1), (2). Upon such certification, the United States is substituted as defendant in place of the employee and the litigation is thereafter governed by the FTCA. Osborn, 549 U.S. at 230, 127 S. Ct. at 888. If the action is commenced in state court, the Westfall Act calls for its removal to a federal district court and renders the Attorney General's certification conclusive for purposes of removal. 28 U.S.C. § 2679(d)(2); Osborn, 549 U.S. at 230, 127 S. Ct. at 888.

Significantly though, the Attorney General may delegate this certification authority. 28 U.S.C. § 510. And in fact, the Attorney General has delegated this authority to the Director of the Torts Branch of the Civil Division of DOJ. 28 C.F.R. § 15.4(a) ("[A]ny Director of the Torts Branch, Civil Division, Department

of Justice, is authorized to make the statutory certification that the Federal employee was acting within the scope of his office or employment with the Federal Government at the time of the incident out of which the suit arose.") Contrary to Douse's arguments then, Touhey's scope-of-employment certification filed in this case was sufficient under the Westfall Act. Thus, the case was properly removed to the federal district court, and the court correctly accorded Bain immunity on Douse's tort claims.

B. Res Judicata

In addition, plaintiff Douse argues that the district court misapplied the doctrine of res judicata to his case. We disagree.

Under the doctrine of res judicata (also known as claim preclusion), a claim is barred by a prior suit if: "(1) there is a final judgment on the merits; (2) the decision was rendered by a court of competent jurisdiction; (3) the parties . . . are identical in both suits; and (4) the same cause of action is involved in both cases." Griswold, 598 F.3d at 1292 (quotation marks omitted). All four conditions are met here.

First, there was a final judgment on the merits in Douse's two prior civil actions because the district court dismissed both of his complaints for failure to state a claim for relief pursuant to Rule 12(b)(6). Federated Dep't Stores, Inc. v. Moitie, 452 U.S. 394, 399 n.3, 101 S. Ct. 2424, 2428 n.3 (1981) ("[A] dismissal for

failure to state a claim under Federal Rule of Civil Procedure 12(b)(6) is a judgment on the merits." (quotation marks omitted)); NAACP v. Hunt, 891 F.2d 1555, 1560 (11th Cir. 1990) (same). Second, the dismissals were rendered by a court of competent jurisdiction because Douse's first state court action was properly removed to the federal district court in the Northern District of Georgia under the Westfall Act, and his second federal action involved a federal claim and properly invoked the jurisdiction of that federal district court. See 28 U.S.C. §§ 1331, 2679(d)(2). Third, the parties are identical in the actions as all involved Douse, Bain, and the United States. Fourth, the cases involve the same cause of action because the claims Douse raised in each are based upon the same incident—that is, on February 4, 2016, Bain publicly disclosed Douse's medical and personal information in the Camp Lejeune litigation. See Griswold, 598 F.3d at 1293 ("If a case arises out of the same nucleus of operative facts, or is based upon the same factual predicate, as a former action, the two cases are really the same 'claim' or 'cause of action' for purposes of res judicata." (alterations and quotation marks omitted)).

As can be reasonably construed, Douse's arguments on appeal relate to the second prong of the res judicata analysis—that the prior decisions were made by a court of competent jurisdiction. Specifically, Douse argues that Bain's and the United States' removal of his first action from Georgia state court was untimely

under 28 U.S.C. §§ 1442(a) and 1446(b), and therefore the suit was not properly in the federal district court. For this reason, he also argues that the state court should have entered a default judgment in his favor in that first state action.

Douse is correct that § 1442(a) provides for the removal of an action against a federal officer and that § 1446(b) generally requires that removal be accomplished within 30 days of the federal officer's receipt of the complaint.[2] However, this case was removed pursuant to the Westfall Act, which provides that removal may take place "at any time before trial." 28 U.S.C. § 2679(d)(2) (stating that once the Attorney General certifies that a tort claim against a federal employee is premised on actions taken within the scope of his employment, any civil action commenced upon such a claim in state court "shall be removed . . . at any time before trial" to federal district court). Douse does not dispute on appeal, and it appears to us, that a trial in that first state court action was never scheduled, much less held, and thus the removal was timely. Accordingly, Douse's arguments regarding the propriety of the district court's jurisdiction over his prior lawsuit

[2] 28 U.S.C. § 1442(a) provides in relevant part that, "[a] civil action . . . commenced in a State court against or directed to any of the following may be removed by them to the district court of the United States . . . (1) The United States or any agency thereof or any officer (or any person acting under that officer) of the United States . . . ." In turn, 28 U.S.C. § 1446(b) states in relevant part that "[t]he notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading."

have no merit. We therefore conclude that the district court properly dismissed Douse's claims under the doctrine of res judicata.[3]

IV. CONCLUSION

For the foregoing reasons, we affirm the district court's dismissal of Douse's complaint under Rule 12(b)(6).

AFFIRMED.

[3]Douse raises several arguments on appeal regarding the merits of his claims against Bain and the United States. For example, Douse contends that he presented sufficient evidence that Bain unlawfully disclosed his medical and personal information and thus he is entitled to money damages. Because we conclude that his claims are barred under the doctrine of res judicata, we do not address the merits of his claims.

Additional material from this filing is available in the Clerk's Office.