

Case no.

21-291

08/25/21

MD

IN THE
SUPREME COURT OF THE UNITED STATES

Barbara A Silva

Petitioner

VS.

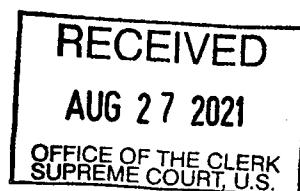
The United States of America

Respondent

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE TENTH CIRCUIT

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QUESTION(S) PRESENTED

1) Under Privacy Act of 1974, as amended, 5 U.S.C § 552a.

(2)(c)(d),(6),(9),(10).

a) Is the Agency required to maintain accurate information on each individual, and to not disclose a person protected information (PPI). Should this also be valid when issuing two people the same SSN and each of the individuals have access to the others information and causes harm?

b) Does this provide the district courts with subject matter Jurisdiction Under FTCA when violated pursuant to 5 U.S.C. 552a (1) Civil Remedies – (c)(d), (2)(a)(b), (3)(a)(b), (4)(a)(b) and (5)?

2) Are the exceptions under 28 U.S.C. 2680(h) a generic way for the United States to get out of the waiver of sovereign immunity under FTCA 28 U.S.C. 1346(b)?

3) In the 14th amendment of the constitution it states "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." Would the United States be in violation of the 9th amendment & 14th amendment of the United States Constitution by negligently issuing to one person, another's social security number and causing harm?

4) Is the But-For causation Sine Qua Non rule in negligence cases?

Would this not apply to this Particular case?

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Petitioner Barbara Silva respectfully prays that a writ of certiorari be issued to review judgment below.

Report for case No; 21-2005 10th Circuit Court of Appeals.

Filed 06/03/2021 (Honorable Judge Nancy L Moritz)

Report for Case No: 17-cv-01224-MV-JHR - Supplemental findings and recommended disposition of the Magistrate Judge (The Honorable Judge Jerry H. Ritter) Filed 11/12/2020 Document 46.

Opinion for Case No: 17-cv-01224-MV-JHR - Memorandum opinion and order on report and recommendation of the

Magistrate Judge (by The Honorable District Judge Martha Vasquez) Filed 01/04/2021 Document 49.

No petition for rehearing or hearing en banc was filed in this case.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C §1257(a)

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

Rule 12(b)(6)

Federal Tort Claims Act (FTCA), 28 U.S.C. 2672

The First Amendment (Amendment I) to the United States Constitution:

Petition the Government for a redress of grievances.

Article [VII] (Amendment 7 - Civil Trials)

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a

Jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

**Article (XIV) (Amendment 14 guaranteed all citizens
“equal protection of the laws.”)**

The Due Process Clause prohibits state and local governments from depriving persons of life, liberty, or property without a fair procedure.

The Ninth Amendment (Amendment IX) to the United States Constitution:

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage other rights.

The Fourteenth Amendment (Amendment XIV) to the United States Constitution

Section 1 – No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction of equal protection of the laws.

United States Privacy Act of 1974 (5 U.S.C 552(a)(5)(6)

(a) Establishes a code of fair information practices that governs the collection, maintenance, use, and dissemination of information about individuals that is maintained in systems of records by federal agencies.

(5)"system of records" means a group of any recorders under the control of any agency from which information is retrieved by the name of the individual or by some identifying number.

(6)"Statistical record" maintained for reporting purposes and not used in whole or in part in making any determination about an identifiable individual except as provided by section 8 of title 13.

28 U.S. Code 1346(b)

TABLE OF AUTHORITIES CITED

Spokeo, Inc v. Robins No. 13-1339 (2016):SCOTUS

15 U.S.C 1681 e (b). Imposes liability on any person who willfully fails to comply with any requirement of the act with respect to any individual § 1681n(a).

Comcast Corporation v National Association of African American owned media and Entertainment Studio Networks Inc No.18-1171. SCOTUS Utilization of the But-For Causation in Liability

U.S. v. Gaubert, 499 U.S. 315, 322-23. ('91)

Berkovitz v. U.S., 486 U.S. 531, 536 ('88). See Kennewick Irrigation Dist. v. U.S., 880 F.2d 1018, 1025 (9th Cir.'89).

Calkins v. Cox Estates, the court stated the foreseeability is an integral part of duty: If it is found that a plaintiff, and injury to that plaintiff, were foreseeable, then a duty is owed that plaintiff by the defendant.“ 110 N.M. 59, 62, 792 P.d 36, 39 (1990)(quoting Ramirez, 100 N.M at 541, 673 P.2d at 825)

The Federal Tort Claims Act (June 25, 1946, ch. 646, Title IV, 60 Stat. 812, "28 U.S.C. Pt.VI Ch.171" and 28 U.S.C. 1346(b)) ("FTCA") and Federal Tort Claims Act (FTCA) 20 CFR Part 429, Subpart A. In accordance with 429.10 1 that states:

"This subpart applies only to claims filed under the Federal Tort Claims Act, as amended, 28 U.S.C. 2671- 2680 (FTCA), for money damages against the United States for damage to or loss of property or **personal injury** or death that is caused by the negligent or
wrongful act or omission of an employee of the Social Security Administration (SSA). The loss, damage, injury or death must be caused by the employee in the performance of his or her official duties, under circumstances in which the United States, if a private person, would be liable in accordance with the law of the place where the act or omission occurred.

Calkins v. Cox Estates

110 N.M. 59, 62, 792 P.d 36, 39 (1990)(quoting Ramirez, 100 N.M at 541, 673 P.2d at 825).

110 NM. At 63, 792 P.2d at 40. Supreme court in Calkins also considered the "relationship of the parties, the Plaintiffs injured interest's and the defendants conduct; it is essentially a policy decision based on these factors that the plaintiffs interests are entitled to protection."

Dalehite v United States, *supra*, at 36

Administrative Procedure ACT

Sections 303(a)(1) and 303(a)(3) of the Social Security Act (SSA) (42 U.S.C. 503(a)(1) and (3))

20 C.F.R. Part 614, Appendix B). When ID issues arise through a cross-match with a federal database, the Computer Matching and Privacy Protection Act of 1988 (CMPPA), 5 U.S.C. 552a, also applies. 1137(a)(1)

5 U.S. Code § 552a,(g)(1)(c)(d), (4)(A)(B), (5)

G(1) Civil Remedies

(C) fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such record, and

consequently a determination is made which is adverse to the individual; or (D) fails to comply with any other provision of this section, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual, the individual may bring a civil action against the agency, and the district courts of the United States shall have jurisdiction in the matters under the provisions of this subsection.

(4)

In any suit brought under the provisions of subsection (g)(1)(C) or (D) of this section in which the court determines that the agency acted in a manner which was intentional or willful, the United States shall be liable to the individual in an amount equal to the sum of—

(A) actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to recovery receive less than the sum of \$1,000; and (B) the costs of the action together with reasonable attorney fees as determined by the court.

(A) actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to recovery receive less than the sum of \$1,000; and (B) the costs of the action together with reasonable attorney fees as determined by the court.

(5) An action to enforce any liability created under this section may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the cause of action arises, except that where an agency has materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to establishment of the liability of the agency to the individual under this section, the action may be brought at any time within two years after discovery by the individual of the misrepresentation. Nothing in this section shall be construed to authorize any civil action by reason of any injury sustained as the result of a disclosure of a record prior to September 27, 1975.

STATEMENT OF THE CASE

Defendant negligently issued a social security number (hereinafter referred to "SSN") to Barbara Silva (Petitioner) that belonged to another citizen causing serious harm. This could have been avoided if the Social Security Administration (hereinafter referred to "SSA") had followed policy.

There were several things in the policy they did not follow. For instance, they did not look at the year of birth for both parties. If they had, they would have seen that the persons were one year apart in age. They did not look at the last name of either person, which were different. They did not look at the state in which either lived in. They lived in different states. Had they done even just one of these things it would have thrown up a red flag and this would never have occurred.

The SSA's letter alone acknowledges their error and provides proof of this. According to the SSA on Identity verification and integrity is a top priority of the Department. The events following the issuance of the SSN qualify under the "but-for" causation (Sine Qua Non).

The Government and lower courts contend that this the complaint is "based on the injuries to reputational and economic interests and that her claim sounded in defamation, negligent misrepresentation, interference with contractual rights, and negligent or intentional infliction of emotional distress" R.196 which are barred by 28 U.S.C. § 2680(h) which provides that the government may not be sued in tort for "any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights." Both the government and lower courts have utilized 2680(h) generically but not specifically and in turn violated Petitioner's rights under the Constitution and regulations as follows:

I

1st Amendment for petition the government for a redress of grievances, Article 7, and the 9th & 14th Amendments of the U.S. Constitution and the United States Privacy Act of 1974 5 U.S.C. 552(a)(5)(6) and the Fair Credit Reporting Act of 1970 (FCRA) Spokeo Inc v. Robins No. 13-1339 (2016).

Utilizing 28 U.S.C. 1346(b)(1) authorizes the courts subject-matter jurisdiction under negligence for loss of property, or personal injury caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment. With the Privacy Act and FCRA the government did not comply with the requirements of the act with respect to any individual, which therefore imposes liability on the Government. This also provides subject-matter jurisdiction. Petitioner was able to establish (1) injury in fact (Monetary loss from Veteran Disability payments and benefits) (2) Traceable to the conduct of the defendant (Issuing the SSN of another to Petitioner)(3) favorable judicial decision.

II

The government and lower courts held that the applicability of FTCA exceptions and "Plaintiffs failure to demonstrate analogous tort liability under New Mexico state law as required by 28 U.S.C. 1346(b)(1).

With the unusual circumstances of this case there are Zero similar cases in all of the United States of America Courts. U.S. supreme Court, U.S. v. Gaubert, 499 U.S. 315 (1991)(held) This case is about the discretionary function exception that covers acts involving an element of judgment or choice if they are based on considerations of public policy. It is the nature of the conduct, rather than the status of the actor, that governs whether the exception applies. If an employee obeys the direction of a mandatory regulation, the Government will be protected; and if an employee violates a mandatory regulation, there will be no shelter from liability, because there is no room for choice, and the action will be contrary to policy. In this case the government should not be protected because in no way did they follow the mandatory policy.

Therefore this provides a claim in which relief can be granted.

III

The government contends that damages to Barbara's reputation as a result of the Administration's false

statements, the United States retains immunity "based on § 2680(h) exceptions for libel and slander. R.197

The courts claim damages to Silva's reputation falls under libel and slander. However, there was never a false statement made by SSA, they negligently issued her another's SSN which ruined Silva's reputation, happiness and finances, therefore, this exception does not qualify under 2680(h). This falls under Sine Qua Non rule of the But-for causation. Comcast Corporation v National Association of African American owned media and Entertainment Studio Networks Inc No.18-1171

IV

The Lower Courts found Silva's complaint to sound in misrepresentation, interference with contractual rights, and negligent or intentional infliction of emotional distress.

Petitioner contends the SSA issuing a SSN belonging to another citizen is not any of the above, and that with contractual rights, and negligent or intentional infliction of emotional distress (these should fall under the law enforcement proviso) In Calkins v. Cox Estates, the court

stated the foreseeability is an integral part of duty: If it is found that a plaintiff, and injury to that plaintiff, were foreseeable, then a duty is owed that plaintiff by the defendant.“ 110 N.M. 59, 62, 792

P.d 36, 39 (1990)(quoting Ramirez, 100 N.M at 541, 673 P.2d at 825).

Supreme court in Calkins also considered the “relationship of the parties, the Plaintiffs injured interest’s and the defendants conduct; it is essentially a policy decision based on these factors that the plaintiffs interests are entitled to protection.” 110 NM. At 63, 792 P.2d at 40. How does following policy or the lack there of, fall under misrepresentation, interference with contractual rights, and negligent or intentional infliction of emotional distress? It does not.

Dalehite v United States, *supra*, at 36 (“where there is room for policy judgment and decision there is Discretion”) in sum, the discretionary function exception insulates the Government from liability if the action challenged in the case involves the permissible exercise of policy judgment.

There should not be any doubt or discretion to the policy of issuing SSN's. The Government should be held liable for this tortfeasance.

V

The lower courts erred when stating that Silva had raised a new theory of government liability and was treating her complaint as an action under some other statute, and did not address the issues raised for the first time in her reply brief.

This is inaccurate, Silva (Pro Se) may not have used the correct verbiage throughout the case never the less the actions were addressed. Silva has always treated this case as a Federal Tort Claims Act Negligence case.

VI

The lower court stated Silva alleged a sufficient injury and establish Article III standing but did not establish subject-matter jurisdiction for claims in which the government had not waived its sovereign immunity. This is where the lower court erred in their decision.

The FTCA under negligence provides subject-matter jurisdiction. The SSA's policy is as follows:

The Federal Tort Claims Act (June 25, 1946, ch. 646, Title IV, 60 Stat. 812, "28 U.S.C. Pt.VI Ch.171" and 28 U.S.C. 1346(b)) ("FTCA") and Federal Tort Claims Act (FTCA) 20 CFR Part 429, Subpart A. In accordance with 429.10 1 that states:

"This subpart applies only to claims filed under the Federal Tort Claims Act, as amended, 28 U.S.C. 2671- 2680 (FTCA), for money damages against the United States for damage to or loss of property or **personal injury** or death that is caused by the negligent or wrongful act or omission of an employee of the Social Security Administration (SSA)."

Reason for granting the Petition

The New Mexico District court and the United States court of appeals have erred in their decisions for this case. Jurisdiction should have been approved under the FTCA as well as 5 U.S.C 552a.

The United States Constitution and Federal Law have authorized to me, as a Citizen of the United States of America, certain rights and protections. When the United States violates these rights and protections, they need to be held to a higher standard of accountability. When the Social Security Administration issues one number to two separate individuals, it causes a violation in the following:

United States Privacy act; But-for causation. Both persons involved can see the others information i.e. Date of birth, address, family members, credit files, jobs and locations, criminal history, education and the list goes on.

United States Fair Credit Reporting Act; But-for causation. Mixed credit files, judgments and liens placed on the wrong person, credit collection errors and harassment from those collections.

United States Constitution First Amendment; Petition the Government for a redress of grievances.

United States Constitution Fourteenth Amendment (Article XIV); The due process clause prohibits state and local governments from depriving persons of life, liberty or property without a fair procedure. As a citizen of the United States, the issuing of the SSN is one of the government's mandatory requirements. When they issue someone another's SSN, they deprive that person of life, liberty and property as well as happiness. The lower courts have denied me equal protection of the laws.

5 U.S.C. § 552A – Records maintained on individuals

This case is not just about what has happened to the Petitioner, but what it means to others when Policies are not followed within the Government. Then the Government decides to hide the truth when they did make an error. If Petitioner had known the true cause at the beginning, maybe Ms Silva could have approached the corrections of Records differently.

The SSA should not have had an issue supplying a letter for the Navy. Yet they would not. What reason would they have other than to hide the fact that Policies and Regulations were violated and they did not want to be held accountable for their actions? (But-for causation) By doing so, they deprived Ms Silva of Veteran benefits, Medical benefits, Disability benefits and retirement benefits for 30 years. What happens to the next person when they find out and how many identity theft cases are really SSA errors?

The United States Supreme Court should decide this case. There are no authorities to help with this kind of FTCA negligence case. The People need to know that the Government will be held accountable when they violate their own policies, and to understand how can destroy a citizen's life because they did not want to get caught violating policies, protections and regulations they've established.

The Administrative procedure act (APA); Judicial review.
Under the APA, final agency decisions are subject to judicial review. The APA provides for judicial review for people and parties "adversely affected or aggrieved by agency action with the meaning of a relevant statute or suffering "legal wrong". because of agency action. This is another qualification for Judicial review under this case as well as subject-matter Jurisdiction. Primarily, 5 U.S. Code § 552a, (g)(1)(c)(d), (4)(A)(B), (5) Records maintained on individuals. G (1) Civil Remedies, establishes total Jurisdiction to the District court

Petitioner respectfully prays this Petition for Writ of Certiorari be granted so the Supreme Court can clarify cases where there is several protection of rights categories that are violated. Similar within Constitutional and regulatory standards for the citizens of the United States that are in conflict with the decisions of the lower courts

Respectfully Submitted:



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