

United States Court of Appeals
for the Fifth Circuit

No. 20-50070
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

August 23, 2021

Lyle W. Cayce
Clerk

SURAN WIJE,

Plaintiff—Appellant,

versus

UNITED STATES OF AMERICA,

Defendant—Appellee.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:19-CV-660

Before SMITH, HIGGINSON, and WILLETT, *Circuit Judges.*

PER CURIAM:*

Suran Wije moves for leave to appeal in forma pauperis (IFP) from the denial of his claims against the United States Department of Education (USDE) under the Federal Tort Claims Act (FTCA). The district court dismissed the action for failure to state a claim under 28 U.S.C. § 1915(e)(2).

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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The district court also denied leave to appeal IFP because the appeal is not in good faith. *See McGarrah v. Alford*, 783 F.3d 584, 584 (5th Cir. 2015) (unpublished).

In his complaint, Wije contended that the USDE negligently failed to protect him from constitutional violations by the Texas Woman's University (TWU). He argues that the USDE had a duty to act in his favor based on a mission statement on the USDE's website, a broad policy statement in a form letter from the USDE's Office of Civil Rights, and more generally under the Constitution. The district court properly dismissed his action because his claims are not based on any "law of the place"—in this case, Texas law—under which "the United States, if a private person, would be liable." 28 U.S.C. § 1346(b)(1); *see FDIC v. Meyer*, 510 U.S. 471, 477-78 (1994); *Coleman v. United States*, 912 F.3d 824, 835 (5th Cir. 2019).

Further, the action is barred by the discretionary function exception of 28 U.S.C. § 2680(a) because Wije fails to allege any specific nondiscretionary duty imposed on the USDE. *See United States v. Gaubert*, 499 U.S. 315, 322-23 (1991). We also note that the claims and issues in this action are indistinguishable from those rejected in a 2014 action against TWU and the USDE. *See Wije v. Stuart*, 694 F. App'x 234, 235-36 (5th Cir. 2017). Wije is precluded from relitigating those claims and issues. *See United States v. Shanbaum*, 10 F.3d 305, 310-11 (5th Cir. 1994) (addressing the doctrines of issue preclusion and claim preclusion).

Wije has failed to identify any nonfrivolous issue for appeal. *See McGarrah*, 783 F.3d at 584. Accordingly, the IFP motion is DENIED, and the appeal is DISMISSED AS FRIVOLOUS.

In addition to this frivolous appeal, Wije has filed two essentially identical and equally meritless civil actions. He is therefore WARNED that the filing of additional repetitive or frivolous actions or appeals will result in

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sanctions, including monetary sanctions and limits on his access to this court and any court subject to this court's jurisdiction.

United States Court of Appeals

FIFTH CIRCUIT
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August 23, 2021

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing
or Rehearing En Banc

No. 20-50070 Wije v. USA
USDC No. 1:19-CV-660

Enclosed is a copy of the court's decision. The court has entered judgment under Fed. R. App. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

Fed. R. App. P. 39 through 41, and 5th Cir. R. 35, 39, and 41 govern costs, rehearings, and mandates. **5th Cir. R. 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following Fed. R. App. P. 40 and 5th Cir. R. 35 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

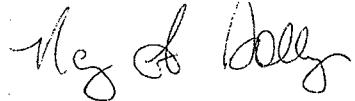
Direct Criminal Appeals. 5th Cir. R. 41 provides that a motion for a stay of mandate under Fed. R. App. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under Fed. R. App. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari.** Additionally, you MUST confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

Sincerely,

LYLE W. CAYCE, Clerk



By: Nancy F. Dolly, Deputy Clerk

Enclosure(s)

Mr. Suran Wije