No. 26-_____

Supreme Court of the United States

JOSE AMAURY SANCHEZ-JIMENEZ,
Petitioner,

v.

UNITED STATES OF AMERICA, MARIANO GARAY,
Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the First Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

A. Chiaverini v. City of Napoleon, 602 U.S. 556 (2024) held that the presence of probable cause for one charge in a criminal proceeding does not categorically defeat a Fourth Amendment malicious-prosecution claim relating to another, baseless charge. In Sanchez' case the initial charging document (criminal complaint) contained two charges, one of which was a charge without probable cause (hereinafter "Chiaverini violation"). An indictment - invalid due to misrepresentations to the Grand Jury - was "cured" by a superseding indictment filed a year later containing only the charge with probable cause. The questions presented under *Chiaverini* are as follows:

Whether a FTCA malicious prosecution claim under the holding of *Chiaverini* is barred by a superseding indictment (without the invalid charge) filed more than a year after the initiation of the criminal prosecution? Are damages allowed for the time between the "Chiaverini violation" and the superseding indictment filed a year later? Does the "Chiaverini violation" survive an allegedly curative superseding indictment, allowing for damages even after said filing?

B. In compliance with the FTCA notice requirements, Sanchez sent SF95s to the US Attorney for Puerto Rico and the US CBP main office. The US CBP denied having received the SF95. The US Attorney did receive the SF95. The FTCA related question is:

Whether notice under 28 U.S.C. §2401(b) is complied with when the US Attorney receives notice of the FTCA claims and fails to forward same as required by 28 C.F.R. §14.2(b)(1).

RELATED PROCEEDINGS

1. United States Court of Appeals (1st Cir.), No. 24-1364, Jose Amaury Sanchez-Jimenez v. United States of America, Mariano Garay-Ortiz (Judgment - October 20, 2025);
2. United States District Court (D.P.R.), No. 22-cv-1483 (GMM), Jose Amaury Sanchez-Jimenez v. United States of America, Mariano Garay-Ortiz (Judgment - March 6, 2024); and,
3. United States District Court (D.P.R.), No. 20-cr-340 (PAD), United States of America v. Jose Amaury Sanchez-Jimenez (Judgment of Acquittal - November 18, 2021).

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PETITION FOR WRIT OF CERTIORARI

Jose Amaury Sanchez-Jimenez, represented by Javier A. Morales-Ramos, respectfully petitions for a writ of certiorari to review the judgment of the Court of Appeals for the First Circuit.

OPINION BELOW

The Court of Appeals for the First Circuit issued its Opinion on October 20, 2025. *See*: Appendix A.

JURISDICTION

The judgment of the court of appeals was entered on October 20, 2025. Jurisdiction is invoked under 28 U.S.C. § 1254(1), and Rule 13(3) of the Rules of the Supreme Court. The District Court for the District of Puerto Rico assumed jurisdiction for the FTCA claim under 28 U.S.C. § 1346(b).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fourth Amendment and 28 U.S.C. § 2680(h) are involved in the first question presented. The statutory provisions involved in the second question presented by this case are 28 U.S.C. § 2680(h) and 28 U.S.C. § 2401(b) (and its related regulation found at 28 C.F.R. § 14.2(b)(1)).

The Fourth Amendment to the United States Constitution provides in relevant part: "The right of the people to be secure in their persons, houses, papers,

and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV.

The Federal Tort Claims Act (FTCA, 28 U.S.C. §§ 2671-2680) Exceptions Clause that allows for malicious prosecution claims is found at 28 U.S.C. §2680(h), which reads in its relevant part: "... with regard to acts or omissions of investigative or law enforcement officers of the United States Government, the provisions of this chapter and section 1346(b) of this title shall apply to any claim arising, on or after the date of the enactment of this proviso, out of assault, battery, false imprisonment, false arrest, abuse of process, or malicious prosecution."

The time to commence a tort action against the United States is governed by 28 U.S.C. § 2401(b): "A tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues or unless action is begun within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented."

STATEMENT OF THE CASE

A. Criminal Proceedings

On September 23, 2020, José Amaury Sánchez-Jiménez (hereinafter "Sanchez") traveled to Puerto Rico from the Dominican Republic. Sánchez had gone from Puerto Rico to the Dominican Republic to visit his wife and family and do construction work in a house belonging to his mother. While at the Dominican Republic, Sánchez was contacted by a friend who informed him that a person needed a passport to be brought to Puerto Rico. Sánchez was bringing said passport and a visa upon his return to Puerto Rico not knowing that they were false documents. During his interview by CBP officers Sánchez stated that he was "not sure" about the validity of the documents. He was arrested that same day.

On September 24, 2020, the next day of his arrest, Sanchez was charged by complaint as having violated 18 U.S.C. §1543 [related to forgery or false use of a passport (a charge for which there was no probable cause)] and §1546(a) [fraud related to passports/visas]. The agent swearing the AIS stated that Sanchez "did not believe" the documents were real.

At the Initial Appearance that took place on September 25, 2020, Sanchez was granted bail under certain conditions that included a ban on travel outside of the USA. He could not visit his wife nor continue working in his mother's house.

An Indictment was returned by Grand Jury on October 14, 2020. Prior to the trial in 20-cr-340, upon receipt of the transcripts of the testimony of the agent before the Grand Jury, it was noted that the agent had stated to the Grand Jury that Sanchez "knew that the documents were fraudulent." Said misrepresentation to the Grand Jury voided the presumption of probable cause of the indictment.

On October 14, 2021, a Superseding Indictment was returned. On October 28, 2021, another Superseding Indictment was returned. The criminal trial took place between November 15-18, 2021. A Not Guilty Verdict was rendered on November 18, 2021.

B. Civil Proceedings - District and Appeals Courts

FTCA exhaustion of administrative remedies was initiated with the notification of Standard Form 95s to the U.S. Attorney for the District of Puerto Rico and the U.S. Customs and Border Protection (U.S.P.S. tracking numbers 9502606700411341921887 and 9502606700411341921900), received by said entities on December 8 and 14, 2021, respectively. The District Attorney did not challenge receipt of said SF 95. The US-CPB denied receipt of same.

On October 11, 2022, a civil complaint under the FTCA and Bivens was filed in the US District Court for the District of Puerto Rico. Said complaint was dismissed by the District Court on March 6, 2024. See: App B. The Court noted

that the Supreme Court has not examined the FTCA's presentment requirements, accepted the US-CBP's denial of receipt of the SF-95, paid no attention to the DA's receipt of the SF-95 stating it was an improper recipient (*See*: APP-28-29), and held that it lacked subject-matter jurisdiction over the FTCA claim. The Bivens cause of action was also dismissed by the District Court - Bivens is not relevant to the present Petition.

On April 3, 2024, a Notice of Appeal was filed. Briefs were filed by the parties (Sanchez on May 22, 2024; and the USA/Garay on October 23, 2024). A citation of supplemental authorities pursuant to Fed.R.App. P. 28(j) was filed by Sanchez on June 24, 2024 pointing out the possible applicability of Chiaverini v. City of Napoleon, 602 U.S. 556 (2024) to the appeal. Oral arguments took place on March 4, 2025. The Judgment affirming the District Court's decision was entered on October 20, 2025.

The Court of Appeals for the First Circuit assumed without deciding that jurisdiction existed as to the FTCA claim. *See*: APP-6. With that assumption in place, the Court of Appeals then stated that the Second Superseding Indictment - the indictment under which Sanchez was ultimately tried for allegedly having violated 18 USC § 1546(a) - had established probable cause and that therefore Sanchez' malicious prosecution theory failed. *See*: APP-8. Sanchez seeks revision

of said actions - the lack of decision as to the FTCA's jurisdictional question; and, the holding that the second superseding indictment barred the malicious prosecution claims (not taking into consideration Chiaverini).

REASONS FOR GRANTING THE WRIT

A. Whether a FTCA malicious prosecution claim under the holding of *Chiaverini* is barred by a superseding indictment (without the invalid charge) filed more than a year after the initiation of the criminal prosecution? Are damages allowed for the time between the "Chiaverini violation" and the superseding indictment filed a year later? Does the "Chiaverini violation" survive an allegedly curative superseding indictment, allowing for damages even after said filing?

The Opinion by the First Circuit is in conflict with Chiaverini v. City of Napoleon, 602 U.S. 556 (2024). While Chiaverini left crucial matters unsettled, it clearly defined that claims based on malicious prosecution for charges brought forth without probable cause prosper even in the presence of additional valid charges. The First Circuit has closed the door to said claims when the government files a subsequent charging instrument that only contains the valid charge. The factual scenario in this case allows for the proper evaluation and resolution of the questions raised by the First Circuit's position. It allows for the analysis of the causality and damages questions not only left unanswered in Chiaverini but directly raised by the First Circuit's legal precedent it has set in motion.

The initial charges in the Criminal Complaint included 18 U.S.C. §1543 - Forgery or false use of Passport, however, this charge was later dropped. What happens in such cases? Under Chiaverini, the inclusion of said charge in the initial documents of the prosecution supports the malicious-prosecution claims against defendants, given that said charge was "without probable cause." Garay had no evidence, nor any reasonable reasons, to include said charge in the Criminal Complaint. Chiaverini supports our claims that Garay's institution of a charge against Sanchez without probable cause - the charge under 18 U.S.C. §1543 - raises and allows a claim for malicious-prosecution, in violation of the Fourth Amendment. Chiaverini also dictates that said claim survives a finding of probable cause in any other charge (i.e., §1546(a)).

The "in crescendo" fashion of the agent's sworn statements/testimony should be noted - first Garay interviews Sanchez at the airport and gets the statement "I wasn't sure" issued by Sanchez in relation to the legitimacy of the documents; second, we see Garay's modification of Sanchez' "unsureness" to "he did not believe that both documents were real" in the Affidavit in Support of the Criminal Complaint; and, third, we see Garay's final modification of Sanchez' "unsureness" - during his testimony before the Grand Jury to obtain the indictment - where he categorically stated that "[Sanchez] hid the documents because he knew

that the documents were fraudulent." In a certain way, Garay's actions are akin to the officers in Chiaverini who averred that "Chiaverini always suspected the ring was stolen" and "that Chiaverini had admitted in their interview to suspecting the ring was stolen." 602 U.S. at 560. The agents in both instances were pushing their agenda.

It is because of Garay's misrepresentation to the Grand Jury that the initial indictment lacks probable cause. The presumption of probable cause is defeated by the lie that originated said indictment (the first indictment dated October 14, 2020). "Falsifying facts to establish probable cause to arrest and prosecute an innocent person is of course patently unconstitutional" Hinchman v. Moore, 312 F.3d 198, 205-06 (6th Cir. 2002).

The First Circuit held that the flaws of the original indictment were cured by the second superseding indictment, the one on which Sanchez was ultimately tried. This seems contrary to Chiaverini. The First Circuit's decision raises various controversies. How does Chiaverini operate in a case like this where we have a two charge complaint (the originating charging document) which contains an invalid (sans probable cause) charge and a valid one, and later the invalid charge is dropped out of the criminal case? Between the originating charging document (the criminal complaint) and the superseding indictments (assuming they were

untainted) there was a period of more than a year where the proceedings had continued under the flawed indictment. Does the "Chiaverini violation" survive during this period of time? May Sanchez recover damages for his freedom limitations during that period of time? "Even pretrial release may be accompanied by burdensome conditions that effect a significant restraint of liberty." Gerstein v. Pugh, 420 U.S. 103, 114 (1975). We may mention not being able to visit his wife and family, and not being able to continue working in the construction of his mother's house in the Dominican Republic. Does the second superseding indictment act retrospectively, *nunc pro tunc*, to invalidate the malicious prosecution under Chiaverini from the beginning?

Sanchez requests this Honorable Court to define these questions left unanswered by Chiaverini. The First Circuit has taken the position that if the invalid charge is left out of a subsequent valid charging document, the "Chiaverini violation" is cured, and no claim for malicious prosecution may prosper. Sanchez disagrees, and in particular in a case like his, where the original indictment was not valid, the operating charging document - the Criminal Complaint - contained both invalid and valid charges. Even if this Honorable Court determines that the superseding indictment cured the "Chiaverini violation" we suggest that damages should be available for the period of time between the Criminal Complaint and the

Second Superseding Indictment. The basis for this position is the analysis discussed by this Honorable Court in the Chiaverini opinion - among others, Missouri's holding that groundless charges could still constitute valid causes of action, and Hilliard's citation that: "One bad charge, even if joined with good ones, was enough to satisfy the malicious-prosecution tort's "without probable cause" element. 602 U.S. at 563-564.

B. Whether notice under 28 U.S.C. §2401(b) is complied with when the US Attorney receives notice of the FTCA claims and fails to forward same as required by 28 C.F.R. §14.2(b)(1).

The FTCA requires exhaustion of administrative remedies and proper notification. Along these lines, 28 C.F.R. § 14.2(b)(1) states: "When a claim is presented to any other Federal agency, that agency shall transfer it forthwith to the appropriate agency, if the proper agency can be identified from the claim, and advise the claimant of the transfer. If transfer is not feasible the claim shall be returned to the claimant." As per said regulation, the US Attorney for the District of Puerto Rico had a duty to transfer the SF95 to the CBP and advise Sanchez of the transfer. If said transfer was not feasible, the US Attorney for the District of Puerto Rico (a "Federal agency" within the meaning of the FTCA. *See*: 28 C.F.R. § 14.1) had a duty to return the SF95 to Sanchez. The US Attorney for Puerto Rico failed to comply either way.

Three Circuit Courts have applied 28 C.F.R. § 14.2(b)(1) in favor of FTCA claimants, and have coined the term of "constructive filing" as to the notification to an incorrect agency. Thus, the Seventh Circuit in Bukala v. U.S., 854 F.2d 201, 203 (7th Cir. 1988) held: "Interpreting the transfer regulation to allow for constructive filing (*i.e.*, a relation back) of claims presented within the limitations period of § 2401(b) but delivered to the wrong agency and neither transferred to the proper agency nor returned to the claimant, is both logical as well as fair and equitable."[1] Likewise, in Greene v. United States, 872 F.2d 236, 237 (8th Cir. 1989), the Eight Circuit, agreeing with Bukala, noted: "When a federal agency fails to comply with section 14.2(b)(1), a claim that is timely filed with an incorrect agency shall be deemed timely presented to the appropriate agency. Because Greene's claim was timely filed, albeit with the wrong agency, and because GSA failed to transfer or return the claim, her claim satisfies the FTCA administrative claim procedure." The Tenth Circuit has held likewise - "we hold that if the agency fails promptly to comply with the transfer regulation and, as a result, a timely filed, but misdirected claim does not reach the proper agency

[1] Note also: "[W]e hold that an FTCA claimant is not necessarily bound by the last sentence of the transfer regulation where the government fails to comply with its duty to promptly transfer or to return misdelivered FTCA claims forms. " Bukala, *supra*, at 204.

within the limitations period, the claim may be considered timely filed." Hart v. Department of Labor, 116 F.3d 1338, 1341 (10th Cir. 1997).[2]

The First Circuit assumed that there was subject-matter jurisdiction, but did not squarely address the "constructive filing" question. In order to settle this important aspect of the FTCA, Sanchez requests this Honorable Court to apply the reasoning of Bukala, Greene and Hart to this case - directly; or indirectly, returning the case with instructions to the First Circuit to squarely address the issue. The government should not be allowed to claim lack of notification to the correct agency when the U.S. Attorney received the notification and failed in its duty to transfer the SF95 as required by 28 C.F.R. §14.2(b)(1).

CONCLUSION

Sanchez requests this Honorable Court to decide whether a superseding indictment that drops an invalid charge (one without probable cause) limits a claimant from raising a cause of action for malicious prosecution under Chiaverini. If so, what limitations are there. Are damages available for the time

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[2] The Eleventh Circuit has recognized and discussed Bukala, Green and Hart. *See*: Motta ex rel. A.M. v. United States, 717 F.3d 840, 844-845 (11th Cir. 2013). *Note also*: Ahmed v. U.S., 334 F. App'x 512, 514 (3rd Cir. 2009)("Courts permitting constructive filing in the FTCA context have largely been resolving situations where the government's failure to transfer the claim led to the claimant's failure to comply with the FTCA's statute of limitations").

there was no probable cause, or would the superseding indictment cure all past "Chiaverini violations." In essence, Sanchez requests a review of the causation and damages questions that were left unanswered in Chiaverini.

Sanchez also requests this Honorable Court to clarify whether constructive filing in the FTCA context should be adopted for the nation as a whole. When the government fails to transfer the claim, and this leads to a claimant's failure to comply with the FTCA's statute of limitations, the notice requirement should be resolved in favor of the claimant under the rationale of Bukala, Green and Hart.

The writ should be granted.

Respectfully submitted,

In San Juan, Puerto Rico, this 15th of January of 2026.

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XII. APPENDIX

United States Court of Appeals
For the First Circuit

No. 24-1364

JÓSE AMAURY SÁNCHEZ-JIMÉNEZ,

Plaintiff, Appellant,

v.

UNITED STATES; MARIANO GARAY-ORTIZ,

Defendants, Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

[Hon. Gina R. Méndez-Miró, U.S. District Judge]

Before

Barron, Chief Judge,
Thompson and Rikelman, Circuit Judges.

Javier A. Morales-Ramos for appellant.

Jaynie Lilley, Appellate Stay Attorney, Civil Division, with whom W. Stephen Muldrow, United States Attorney, Mariana E. Bauzá-Almonte, Assistant United States Attorney, Chief, Appellate Division, and Gabriella S. Paglieri, Assistant United States Attorney, were on brief, for appellees.

October 20, 2025

THOMPSON, Circuit Judge.

SETUP

Federal law gives a citizen ways to sue for wrongs done by federal employees. One way is to sue the *government* under the Federal Tort Claims Act (FTCA) for certain state-law torts they inflicted "within the scope of their employment." See Brownback v. King, 592 U.S. 209, 212 (2021). See generally Linder v. United States, 937 F.3d 1087, 1090 (7th Cir. 2019) (noting that the FTCA "applies to torts, as defined by state law — that is to say, 'circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred'" (emphasis omitted) (quoting 28 U.S.C. § 1346(b)(1))). Another way is to sue the *employees* under Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971), for certain constitutional offenses they perpetrated. See generally Linder, 937 F.3d at 1090 (stating that "[t]he limited coverage of the FTCA, and its inapplicability to constitutional torts, is why the Supreme Court created the Bivens remedy against individual federal employees").

In today's case, José Amaury Sánchez-Jiménez (just Sánchez from now on, per Spanish naming customs) tried both ways. His federal-court complaint included an FTCA claim, alleging that the government had maliciously prosecuted him for possessing a fake passport and visa, and a Bivens claim, alleging that CBP

Officer Mariano Garay-Ortiz (Garay) had violated the Fourth Amendment by testifying falsely before a grand jury.[1] Invoking (at least implicitly) federal civil-procedure rules 12(b)(1) (lack of jurisdiction) and 12(b)(6) (failure to state a claim), defendants moved to dismiss. They argued (in broad strokes) that Sánchez's FTCA claim failed because he hadn't exhausted administrative remedies and hadn't plausibly alleged malicious prosecution, and that his Bivens claim failed because Bivens wasn't available in this situation. Sánchez opposed. But the judge granted the motion on no-FTCA-exhaustion and no-Bivens-availability grounds.

Sánchez now appeals, asking us to reverse the district judge's rescript. Basically writing just for the parties (who know the case's particulars), we leave the judge's decision undisturbed — relating only what's needed for our *de novo* review, a standard that permits us to affirm for any reason in the record. See, e.g., Cangrejeros de Santurce Baseball Club, LLC v. Liga De Béisbol Pro. De P.R., 146 F.4th 1, 11 n.4, 15 (1st Cir. 2025).

[1] CBP is an initialism for Customs and Border Protection, an agency within the Department of Homeland Security. See 6 U.S.C. § 211(a).

ANALYSIS

Sánchez's FTCA Claim

1

The FTCA makes the government liable for certain state-law torts of its employees committed within the scope of their employment. See, e.g., FDIC v. Meyer, 510 U.S. 471, 475-76 (1994). But aspiring plaintiffs can't sue under the FTCA until they exhaust administrative procedures. See, e.g., McNeil v. United States, 508 U.S. 106, 112 (1993). Which means they must first present their claim to the right federal agency. See 28 U.S.C. § 2675(a). And "[a]n essential element of a claim is 'notification of the incident,' via 'an executed' SF 95 or 'other written' document, 'accompanied by' a demand 'for money damages in a sum certain.'" Holloway v. United States, 845 F.3d 487, 488 (1st Cir. 2017) (emphasis omitted) (quoting 28 C.F.R. § 14.2(a)).[2]

2

The district judge held that Sánchez hadn't "controvert[ed]" defendants' "assertion that CBP lack[ed] any record" that he or "someone acting on his behalf" had "filed the SF95 or any other written notification of his tort claim." So the judge concluded that Sánchez had failed to exhaust administrative

[2] Short for Standard Form 95, an SF 95 (sometimes spelled SF95, without a space) is a document used to submit an administrative claim under the FTCA. See 28 C.F.R. § 14.2(a).

remedies available to him, thus depriving the court of jurisdiction. And with that much resolved, the judge didn't address defendants' alternative argument that the complaint failed to plausibly state a malicious-prosecution claim.

3

a

The parties spend some time discussing whether the district judge got the jurisdiction question right. But because their debate concerns *statutory* (as distinct from *constitutional*) jurisdiction, we can assume without deciding that jurisdiction exists to resolve the case in defendants' favor — through a straightforward *merits* analysis. See, e.g., Gupta v. Jaddou, 118 F.4th 475, 482-83 (1st Cir. 2024) (noting that "when a case poses a question of statutory, rather than [constitutional], jurisdiction, 'the question of jurisdiction need not be resolved if a decision on the merits will favor the party challenging the court's jurisdiction'" (quoting Doe v. Town of Lisbon, 78 F.4th 38, 44-45 (1st Cir. 2023))).

Onward we go, then.

b

Sánchez's malicious-prosecution theory runs something like this. (*1*) He had flown into Puerto Rico from the Dominican Republic, carrying (at a friend's request) what turned out to be a fake passport and visa tucked inside his "luggage behind a

zippered liner" (he was expecting a $200 payment for his troubles). When CBP agent Garay asked him "[w]hy" he had "hid[den] the passport in [the] suitcase," Sánchez answered "[b]ecause I wasn't sure it was real." (*2*) In an affidavit supporting a criminal complaint against Sánchez, Garay later wrote that Sánchez "tried to hide" the passport and visa "because he [(Sánchez)] did not believe that both documents were real." And Garay then testified before the grand jury that Sánchez "hid the documents because he [(Sánchez)] knew that the documents were fraudulent." (*3*) Garay's lie to the grand jury — shown by his "modif[ying]" Sánchez's "'I wasn't sure'" comment "to . . . initially 'he did not believe' . . . and finally to 'he knew'" — led to Sánchez's indictment and trial on charges related to those documents, though a jury ultimately found him not guilty. (*4*) "[T]he wrongful initiation of charges without probable cause is the gravamen of the tort of malicious prosecution" — a tort "actionable under the FTCA and the [l]aws of Puerto Rico." (*5*) The net result is that Garay's "false testimony to the [g]rand [j]ury" put the government on the liability hook. Or so Sánchez says.

c

State law supplies the substantive rules of decision in FTCA cases (as intimated earlier). See 28 U.S.C. § 1346(b)(1). Here, that's the law of Puerto Rico. See, e.g., Díaz-Nieves v. United States, 858 F.3d 678, 683 (1st Cir. 2017). A malicious-

prosecution claim under that law requires the absence of probable cause to prosecute (among other elements). See id. at 688. And this is where Sánchez gets tripped up, as defendants argue.

"'[A] grand jury indictment definitively establishes probable cause' unless 'law enforcement defendants wrongfully obtained the indictment by knowingly presenting false testimony to the grand jury.'" Id. (alteration in original) (quoting González Rucci v. U.S. INS, 405 F.3d 45, 49 (1st Cir. 2005)). But Sánchez's five-step theory fails to account for the reality that he was tried on a *second superseding indictment* issued by the grand jury after CBP agent Juan Batista testified (among other things) that Sánchez copped to hiding the documents because he "wasn't sure if they were good or not." Sánchez never objected to Batista's testimony. Nor does he claim that Batista wrongfully obtained the second superseding indictment by lying to the grand jury.[3] And because the second superseding indictment definitively establishes

[3] Defendants attached the second superseding indictment and Batista's grand jury testimony as exhibits to their motion-to-dismiss papers, which Sánchez includes in his appellate appendices. Sánchez makes no argument that we can't consider these kinds of documents in analyzing the motion to dismiss. See, e.g., Schatz v. Republican State Leadership Comm., 669 F.3d 50, 55-56 (1st Cir. 2012) (indicating that a court can study certain materials — "'documents' attached to or fairly 'incorporated into the complaint,'" "'facts' susceptible to 'judicial notice,'" plus "'concessions' in . . . 'response to the motion to dismiss'" — without converting a motion to dismiss into a motion for summary judgment (quoting Arturet-Vélez v. R.J. Reynolds Tobacco Co., 429 F.3d 10, 13 n. 2 (1st Cir. 2005))).

probable cause, Sánchez's malicious-prosecution theory fails and his FTCA count stays dismissed — a position championed by defendants in their brief without correction from Sánchez in his reply brief.

Sánchez's Bivens Claim

1

"Constitutional rights do not typically come with a built-in cause of action to allow for private enforcement in courts." DeVillier v. Texas, 601 U.S. 285, 291 (2024). Bivens created one. And between 1971 and 1980, the Supreme Court crafted a cause of action against Constitution-violating federal officers in three situations: (1) a Fourth Amendment search-and-seizure violation by a federal narcotics agent, see Bivens, 403 U.S. at 389-90; (2) a Fifth Amendment employment-discrimination violation by a United States congressperson, see Davis v. Passman, 442 U.S. 228, 230-31 (1979); and (3) an Eighth Amendment inadequate-medical-care violation by prison officials, see Carlson v. Green, 446 U.S. 14, 16-18 (1980).[4]

But — a very big but, actually — the Court hasn't recognized a new Bivens action in the *many* decades since Carlson (though not because of any lack of opportunity, mind you):

[4] The Court refers to Bivens, Davis, and Carlson as "the Court's three Bivens cases." See Hernández v. Mesa, 589 U.S. 93, 101 (2020) (quoting Ziglar v. Abbasi, 582 U.S. 120, 134 (2017)).

"*consistently* refus[ing] to extend Bivens liability to any new context or new category of defendants," see Corr. Servs. Corp. v. Malesko, 534 U.S. 61, 68 (2001) (emphasis added), the Court — invoking separation-of-powers constraints — has made "clear that, in all but the most unusual circumstances, prescribing a cause of action" is Congress's business, *not ours*, see Goldey v. Fields, 606 U.S. 942, 942-43 (2025) (per curiam) (quoting Egbert v. Boule, 596 U.S. 482, 486 (2022)). And maybe because the Court has "cabined the doctrine's scope, undermined its foundation, and limited its precedential value," Hernández, 589 U.S. at 118 (Thomas, J., concurring), "expanding the Bivens remedy is now a 'disfavored' judicial activity," Ziglar, 582 U.S. at 135 (quoting Ashcroft v. Iqbal, 556 U.S. 662, 675 (2009)).

Though obviously skittish about extra-statutory damages suits, the Court hasn't totally slammed the Bivens door shut. See Egbert, 596 U.S. at 502 (announcing that if the Court "were called to decide Bivens today, [it] would decline to discover *any* implied causes of action in the Constitution" (emphasis added)); see also Arias v. Herzon, 150 F.4th 27, 33 (1st Cir. 2025) (finding that "[a]t the same time . . . the Court has been careful to state that Bivens itself is still good law"). When confronted with a Bivens-extension bid, we judges "proceed[] in two steps." Egbert, 596 U.S. at 492; see also Goldey, 606 U.S. at 944. We first ask whether the case presents "a 'new context' or involves a 'new

category of defendants,'" see Hernández, 589 U.S. at 102 (quoting Corr. Servs. Corp., 534 U.S. at 68) — "*i.e.*, is it 'meaningful[ly]' different from" the Bivens trio, see Egbert, 596 U.S. at 492 (alteration in original) (quoting Ziglar, 582 U.S. at 139); see also Goldey, 606 U.S. at 944.[5] And if it is, we then ask whether "'special factors' indicat[e] that the Judiciary is at least arguably less equipped than Congress to 'weigh the costs and benefits of allowing a damages action to proceed.'" Egbert, 596 U.S. at 492 (quoting Ziglar, 582 U.S. at 136); see also Goldey, 606 U.S. at 944.[6] See generally Arias, 150 F.4th at 35 (observing that "Egbert does note that the two-step analysis may in some cases

[5] Examples of meaningful differences include "the rank of the officers involved," "the constitutional right at issue," "the extent of judicial guidance" on the matter, "the generality or specificity" of the disputed action, "the statutory or other legal mandate under which the officer was operating," "the risk of disruptive intrusion by the Judiciary into the functioning of other branches," and "potential special factors that previous Bivens cases did not consider." Ziglar, 582 U.S. at 140; see also id. at 147 (adding that "even a modest extension" of the Bivens trilogy "is still an extension"); see also Arias, 150 F.4th at 35 (indicating "'a difference is "meaningful" if it might alter the policy balance that initially justified the causes of action recognized'" in the Court's three Bivens cases (quoting Snowden v. Henning, 72 F.4th 237, 244 (7th Cir. 2023))). See generally Egbert, 596 U.S. at 495 (emphasizing that the step-one inquiry requires more than "superficial similarities").

[6] Examples of special factors include "national security" concerns, "foreign policy" considerations, and existing "alternative" processes for protecting a plaintiff's interests. See Egbert, 596 U.S. at 494, 496-98. See generally Quinones-Pimentel v. Cannon, 85 F.4th 63, 74 (1st Cir. 2023) (stressing that any special factor suffices "to preclude relief").

present only a single question" about "'whether there is any reason to think that Congress might be better equipped to create a damages remedy'" (quoting Egbert, 596 U.S. at 492)).

2

Principally relying on Hernández and Egbert, the district judge relevantly held that — because the case presented a new context (false statements to a grand jury) involving a new type of defendant (a CBP agent), and because special factors (including national security) cautioned against stretching Bivens here — Sánchez's Bivens claim failed. For context (and at the risk of oversimplifying), Hernández declined to extend Bivens to Fourth and Fifth Amendment excessive force claims against a CBP agent over a cross-border shooting. See 589 U.S. at 96-99; see also id. at 108-09 (acknowledging that CBP agents face the enormous task of responding to "'terrorists, drug smugglers and traffickers, human smugglers and traffickers, and other persons who may undermine the security of the United States'" — before also stating that "[s]ince regulating the conduct of agents at the border unquestionably has national security implications, the risk of undermining border security provides reason to hesitate before extending Bivens into this field" (quoting 6 U.S.C. § 211(c)(5))). And Egbert refused to extend Bivens to Fourth Amendment excessive force and First Amendment retaliation claims against a CBP agent investigating a foreign national at a facility known for smuggling

activity and situated on the border. See 596 U.S. at 486-90, 501-02; see also id. at 494-95 (remarking that since the CBP agent "was carrying out Border Patrol's mandate to 'interdic[t] persons attempting to illegally enter . . . the United States or goods being illegally imported into . . . the United States,'" his acts were "intimately related to foreign policy and national security" — before also stating that "the Judiciary is comparatively ill suited to decide whether a damages remedy against any Border Patrol agent is appropriate" (alteration in original) (quoting 6 U.S.C. § 211(e)(3)(A))). Anyway, having so ruled, the judge dismissed Sánchez's Bivens claim under Rule 12(b)(6).

3

Faced with a high legal hill to climb, Sánchez argues that "Garay was in a similar 'rank' position as the [federal] agents in Bivens"; that his case and Bivens involve "Fourth Amendment[] rights"; that "judicial guidance is needed in instructing agents on their duties before the [c]ourts and [g]rand [j]uries"; and that "[a]llowing" his Bivens claim to continue won't "negative[ly] impact . . . governmental operations systemwide" but will "clarify that agents must respect the law." But he doesn't engage with the district judge's Hernández/Egbert-based analysis (he fails even to cite to those cases, let alone grapple with their holdings (by, for instance trying to distinguish them, if possible)) — a point defendants make in their brief without

contradiction from Sánchez in his reply brief. Which can't get him the reversal he wants. See Miller v. Jackson, No. 24-1351, 2025 WL 2611944, at *10 (1st Cir. Sep. 10, 2025) (citing authority "holding that a party commits waiver by 'fail[ing] to address in its opening brief a basis on which the district court ruled against that party'" (quoting parenthetically Vizcarrondo-González v. Vilsack, No. 20-2157, 2024 WL 3221162, at *7 (1st Cir. June 28, 2024) (unpublished table decision))). See generally Tayag v. Lahey Clinic Hosp., Inc., 632 F.3d 788, 792 (1st Cir. 2011) (underscoring that failing to give "serious treatment [to] a complex issue" won't "preserve the claim on appeal").[7]

WRAPUP

We ***affirm***.

[7] Because Sánchez's Bivens claim fails, we needn't consider Garay's claims of absolute and qualified immunity. See Quinones-Pimentel, 85 F.4th at 75 n.12.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

José Amaury Sánchez-Jiménez, Plaintiff, v. United States of America, Mariano Garay, Defendants.	**Civil No. 22-01483 (GMM)**

OPINION AND ORDER

Before the Court is the United States of America ("United States") and Mariano Garay-Ortiz's ("Garay") (collectively, "Defendants") *Motion to Dismiss*. (Docket No. 23). The Court **GRANTS** Defendants' motion.

I. RELEVANT BACKGROUND

On September 23, 2020, Plaintiff, José Amaury Sánchez-Jiménez ("Sánchez" or "Plaintiff") returned to Puerto Rico from a family visit to the Dominican Republic. (Docket No. 1. at 4). While in the Dominican Republic, a friend of Sánchez's, Luis Ramón Rosa, asked Sánchez to transport a passport and visa to Puerto Rico upon his return to the Commonwealth. (Id.). The documents Sánchez was asked to and did bring into Puerto Rico were false. (Id.).

Upon entering Puerto Rico, Sánchez was stopped by U.S. Customs and Border Protection ("CBP"). Upon a search of his luggage, the false documents were found within the lining of his suitcase. (Docket No. 23 at 3). Sánchez was then interrogated by Garay, an

officer with the CBP. (Docket No. 1 at 4). Garay wrote an affidavit recording the statements that Sánchez relayed under oath during the interrogation. (Id.). Sánchez states that he told Garay that he did not know if the documents he had been given to bring into Puerto Rico were genuine or not. (Id. at 4-5). Specifically, when questioned if he knew if the passport was legitimate, Plaintiff told Garay that he "didn't know when [he] received [the passport], but after [he] looked at [it], [he] wasn't sure if it was real." (Docket No. 23-1 at 7). When Garay questioned Sánchez about why he had stowed the passport in the lining of his bag, Sánchez responded: "because I wasn't sure it was real." (Id.).

Sánchez subsequently became the Defendant in Criminal Case No. 20-340 (PAD) over the alleged possession of counterfeit immigration documents. During these proceedings, on October 14, 2020, Garay testified in front of the Grand Jury. He stated that "[Plaintiff] hid the documents because he knew that the documents were fraudulent." (Docket No. 23-3 at 4). That same day Sánchez was indicted for his transport of a fraudulent passport under 18 U.S.C. § 1546(a). *See* Criminal Case No. 20-340 (PAD), Docket No. 16.

On October 14 and 28, 2021, respectively, two Superseding Grand Jury Indictments against Plaintiff were issued based upon the testimonies of CBP Officer Jerry Cabán and CBP Agent Juan

Batista. *See* Criminal Case No. 20-340 (PAD), Docket Nos. 73 and 85. On November 18, 2021, following a four-day jury trial, Sánchez was acquitted of the charges against him. *See* Criminal Case No. 20-340 (PAD), Docket No. 123.

On October 11, 2022, Sánchez filed his Complaint. He contends that Defendants gave false testimony against him before the Grand Jury in the criminal case. (Docket No. 1). Specifically, Plaintiff claims that: (1) the United States engaged in malicious prosecution in violation of the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 1346, 2671-2680, and Puerto Rico Law, 31 L.P.R.A. Sec. 5141; 31 L.P.R.A. § 10801; and (2) Garay violated Plaintiff's Fourth Amendment Rights pursuant to the United States Constitution and the Supreme Court decision in Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971). (Id. at 7-10). Considering these allegations, Plaintiff requested that the Court award him punitive and compensatory damages of $3 million for the pain and suffering he endured because of the criminal charges and litigation imposed upon him. (Id. at 11-12).

On May 15, 2023, Defendants filed a *Motion to Dismiss*. (Docket No. 23). They argue that Plaintiff's FTCA claim fails for: (1) lack of jurisdiction due to Plaintiff's failure to exhaust the administrative remedies available under 28 U.S.C. 2401(b); and (2) even if the Court finds that the Plaintiff adequately exercised

his administrative remedies without avail, he failed to substantiate a malicious persecution FTCA cause of action which requires proof that the officer acted both maliciously and without probable cause. (Id. at 10-12).

In their *Motion to Dismiss*, Defendants also maintain that Garay's testimony does not create a Bivens claim because: (1) Garay has absolute immunity from actions based on Grand Jury testimony; (2) Garay has qualified immunity from liability because he did not violate a clearly established constitutional right under a reasonable officer acting under the totality of the circumstances standard; and (3) Garay's conclusion and testimony that Sánchez knew the passport was illegitimate was a reasonable inference based on the undisputed facts regarding Sánchez's acquisition of the document. (Docket No. 23 at 5-9). Defendants argue, in the alternative, that the Court should follow Supreme Court precedent and be hesitant to extend the Bivens remedy to apply to disputes where other remedies, such as those under the FTCA, are available. (Id. at 12). Finally, Defendants note that Plaintiff was subject to two superseding indictments after the indictment issued based upon Garay's testimony, one on October 14, 2021, and one on October 28, 2021. (Id. at 4).

On May 17, 2023, Plaintiff filed his *Opposition to Motion to Dismiss*. (Docket No. 26). Therein, Plaintiff maintains that there

was sufficient factual evidence to support his claims. Moreover, Sánchez rejects Defendants' immunity arguments contending, for example, that making a false statement, even when the officer believed that it was supported by the totality of the circumstances, was improper, constituted perjury, and violated Sánchez's Fourth Amendment rights. (Id. at 7-8).

Finally, on June 6, 2023, Defendants entered their *Reply to Opposition to Motion to Dismiss*. (Docket No. 29). Defendants again stressed that Garay acted neither with malice nor without probable cause in giving his testimony to the Grand Jury. (Id. at 2-4). They posit that the two superseding indictments were the operative charging instrument against the Plaintiff and thus, Garay's testimony had no actual effect on the charges for which the Plaintiff was indicted. (Id. at 4-5). Defendants also note that Plaintiff failed to exhaust his administrative remedies under the FTCA given that the United States Attorneys are not authorized to receive Standard Form 95s ("SF95s"),[1] and the CBP never received the SF95 claim. (Id. at 7-8).

On June 12, 2023, Plaintiff filed his *Surreply to Reply to Opposition to Motion to Dismiss -DE 29*. (Docket No. 34).

[1] SF95 stands for Standard Form 95, which is the form used to present a claim to a federal agency under the FTCA. *See* 28 C.F.R. § 14.2(a).

II. LEGAL STANDARD

A. Lack of Subject-Matter Jurisdiction

"[F]ederal courts are not at liberty to overlook limitations on their subject matter jurisdiction." Abbott Chem., Inc. v. Molinos de Puerto Rico, Inc., 62 F. Supp. 2d 441, 445 (D.P.R. 1999) *(quoting* A.M. Francis v. Goodman, 81 F.3d 5, 8 (1st Cir.1996)). "It is black-letter law that a federal court has an obligation to inquire sua sponte into its own subject matter jurisdiction." McCulloch v. Velez, 364 F.3d 1, 5 (1st Cir. 2004) (*citing* In re Recticel Foam Corp., 859 F.2d 1000, 1002 (1st Cir.1988)). *See also* Fed. R. Civ. P. 12(h)(3) ("If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action."). Plainly, if this Court determines, as a threshold matter, that it lacks subject matter jurisdiction, it is required to dismiss the case and may not make any determinations on the merits of Plaintiff's claims. *See* Abbott Chem., Inc., 62 F. Supp at 445.

The parties or the Court may raise the issue of subject matter jurisdiction at any time during a proceeding, and if, at any time, it becomes evident that the Court lacks subject matter jurisdiction, then the Court must dismiss the action. *See e.g.* Santiago Rosario v. Estado Libre Asociado de Puerto Rico, 52 F. Supp. 2d 301, 303 (D.P.R. 1999); McNutt v. General Motors Accept.

Corp., 298 U.S. 178, 184(1936); Chaparro-Febus v. Local 1575, 983 F.2d 325, 329 n. 4 (1st Cir.1992). Rule 12(h)(3) standards mirror those challenging subject matter jurisdiction under a 12(b)(1) motion. *See* Smith v. Roger Williams Univ. L. Sch., No. 1:21-CV-133-PJB-AKJ, 2023 WL 3303866, at *1 (D.R.I. May 8, 2023); Berkshire Fashions, Inc. v. M.V. Hakusan II, 954 F.2d 874, 880 n.3 (3d Cir. 1992) (stating that 12(h)(3) and 12(b)(1) motions only differ in that the "former may be asserted at any time" and that, when they both challenge subject-matter jurisdiction, they are "analytically identical").

Under Fed. R. Civ. P. 12(b)(1), a federal court must presume that federal jurisdiction is lacking until established otherwise. *See* Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377(1994); Viqueira v. First Bank, 140 F.3d 12, 16 (1st Cir. 1998). The party asserting federal jurisdiction bears the burden of demonstrating that such jurisdiction exists. *See e.g.* Aversa v. United States, 99 F.3d 1200, 1209 (1st Cir. 1996) (*citing* Murphy v. United States, 45 F.3d 520, 522 (1st Cir. 1995)); Lujan v. Defenders of Wildlife, 504 U.S. 555, 561 (1992); Thomson v Gaskill, 315 U.S. 442, 446 (1942); Reyes-Colón v. United States, 974 F.3d 56, 60 (1st Cir. 2020); Gordo-González v. United States, 873 F.3d 32, 35 (1st Cir. 2017).

The distinction between factual analyses under Rule 12(b)(1) and Rule 12(b)(6) is rooted in the unique nature of the jurisdictional question. A district court has broader power to decide its own right to hear the case than it has when the merits of a case are being considered. "Jurisdictional issues are for the court-, not a jury-, to decide, whether they hinge on legal or factual determinations." Williamson v. Tucker, 645 F.2d 404, 413 (5th Cir. 1981).

There are two broad types of jurisdictional challenges: facial and factual. *See* Cebollero-Bertran v. P.R. Aqueduct & Sewer Auth., 4 F.4th 63, 69 (1st Cir. 2021). In facial challenges, sometimes called sufficiency challenges, the movant accepts the nonmovant's jurisdictionally significant facts but challenges their sufficiency to confer subject-matter jurisdiction. *See* Valentin v. Hosp. Bella Vista, 254 F.3d 358, 363 (1st Cir. 2001). "The analysis is essentially the same as a Rule 12(b)(6) analysis: we accept the well-pleaded facts alleged in the complaint as true and ask whether the plaintiff has stated a plausible claim that the court has subject matter jurisdiction." Cebollero-Bertran, 4 F.4th at 69. In factual challenges, however, the court "engage[s] in judicial factfinding to resolve the merits of the jurisdictional claim." Id. In conducting this analysis, the Court has "broad authority to order discovery, consider extrinsic evidence, and

hold evidentiary hearings." Valentín, 254 F.3d at 363. The reason for this is simple: "[W]hen a factbound jurisdictional question looms, a court must be allowed considerable leeway in weighing the proof, drawing reasonable inferences, and satisfying itself that subject-matter jurisdiction has attached." Id. at 364. As part of this analysis, the Court may review any evidence, including submitted affidavits and depositions, to resolve factual disputes bearing upon the existence of jurisdiction. *See* Land v. Dollar, 330 U.S. 731, 734–35 (1947); *see also* Aversa v. United States, 99 F.3d at 1210 (citation omitted).

If the accuracy (rather than the sufficiency) of the jurisdictional facts asserted by the plaintiff is in question, then the Court gives no presumptive weight to plaintiff's jurisdictional averments, and it must "address the merits of the jurisdictional claim by resolving the factual disputes between the parties." Valentín, 254 F.3d at 363. Again, once challenged, the party asserting federal jurisdiction bears the burden of proving that such jurisdiction exists. *See* Johansen v. United States, 506 F.3d 65, 68 (1st Cir. 2007).

B. Failure to State a Claim

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, a defendant may move to dismiss an action when plaintiffs fail to state a claim upon which relief can be granted.

Fed. R. Civ. P. 12(b)(6). To survive a 12(b)(6) motion, a complaint must contain sufficient facts "to state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007).

In evaluating a motion to dismiss for failure to state a claim under Rule 12(b)(6), the Court must "accept as true all well-pleaded facts alleged in the complaint and draw all reasonable inferences therefrom in the pleader's favor." A.G. ex rel. Maddox v. Elsevier, Inc., 732 F.3d 77, 80 (1st Cir. 2013) (*quoting* Santiago v. Puerto Rico, 655 F.3d 61, 72 (1st Cir. 2011)). "A pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (*quoting* Twombly, 550 U.S. at 555). The complaint must set forth "a short and plain statement of the claim showing that the pleader is entitled to relief[,]" Maddox, 732 F.3d at 80 (*quoting* Fed. R. Civ. P. 8(a)(2)), and should "contain 'enough facts to state a claim to relief that is plausible on its face.'" Id. (*quoting* Twombly, 550 U.S. at 570). "To cross the plausibility threshold a claim does not need to be probable, but it must give rise to more than a mere possibility of liability." Grajales v. P.R. Ports Auth., 682 F.3d 40, 44-45 (1st Cir. 2012) (*citing* Iqbal, 556 U.S. at 678).

"The plausibility standard invites a two-step pavane." Maddox, 732 F.3d at 80 (citation omitted). First, courts "must separate the complaint's factual allegations (which must be accepted as true) from its conclusory legal allegations (which need not be credited)." Id. (*quoting* Morales-Cruz v. Univ. of P.R., 676 F.3d 220, 224 (1st Cir. 2012)). Second, "the court must determine whether the remaining factual content allows a 'reasonable inference that the defendant is liable for the misconduct alleged.'" Id. (*quoting* Morales-Cruz, 676 F.3d at 224); *see also* Rodríguez-Wilson v. Banco Santander de Puerto Rico, 501 F.Supp.3d 53, 56 (D.P.R. 2020).

"Plausible, of course, means something more than merely possible." Zell v. Ricci, 957 F.3d 1, 7 (1st Cir. 2020) (*citing* Schatz v. Republican State Leadership Comm., 669 F.3d 50, 55 (1st Cir. 2012)). Hence, dismissal for failure to state a claim will be appropriate if the pleadings fail to set forth "factual allegations, either direct or inferential, respecting each material element necessary to sustain recovery under some actionable legal theory." Centro Medico del Turabo, Inc. v. Feliciano de Melecio, 406 F.3d 1, 6 (1st Cir. 2005) (*quoting* Berner v. Delahanty, 129 F.3d 20, 25 (1st Cir. 1997)). "A determination of plausibility is 'a context-specific task that requires the reviewing court to draw on its judicial experience and common

sense.'" Id. at 44 (*quoting* Iqbal, 556 U.S. at 679, 129 S.Ct. 1937). "[T]he complaint should be read as a whole, not parsed piece by piece to determine whether each allegation, in isolation, is plausible." Hernandez-Cuevas v. Taylor, 723 F.3d 91, 103 (1st Cir. 2013) (*quoting* Ocasio-Hernández v. Fortuño-Burset, 640 F.3d 1, 14 (1st Cir. 2011)).

III. APPLICABLE LAW AND ANALYSIS

A. FTCA Claim

1. Exhaustion of Administrative Remedies

As a threshold matter, before reaching the merits of the *Motion to dismiss* for failure to state a claim, the Court first considers the question of subject-matter jurisdiction. The United States argues that Plaintiff's failure to exhaust administrative remedies warrants the dismissal of his claims against the Government. Hence, the Court must review whether Plaintiff exhausted available administrative remedies prior to filing his FTCA claim in this Court.

The FTCA creates a limited congressional waiver of sovereign immunity for tortious acts and/or omissions committed by employees of the U.S. acting within the scope of their employment. *See* 28 U.S.C. §§ 1346(b)(1), 2645; *see also* Domínguez v. United States, 799 F.3d 151, 153 (1st Cir. 2015); Diaz-Nieves v. United States, 858 F.3d 678, 683 (1st Cir. 2017). Thus, in certain circumstances

the FTCA allows a plaintiff to hold the United States civilly liable in a manner akin to that applicable to a private individual in similar circumstances. *See* Solís-Alarcón v. United States, 662 F.3d 577, 582 (1st Cir. 2011). The FTCA is weighed in favor of the government. *See* Holloway v. United States, 845 F.3d 487, 489 (1st Cir. 2017). The Act expressly allows actions against the federal government for claims of "'assault, battery, false imprisonment, false arrest, abuse of process, or malicious prosecution' arising out of 'acts or omissions of investigative or law enforcement officers of the United States Government.'" Solis-Alarcon, 662 F.3d at 583 (*quoting* 28 U.S.C. § 2680(h)).

Since the FTCA is a waiver of the United States' sovereign immunity, the failure to meet all waiver requirements renders the court without subject-matter jurisdiction. *See* Dynamic Image Techs., Inc. v. United States, 221 F.3d 34, 40-41 (1st Cir. 2000). Under the FTCA, a putative plaintiff must administratively exhaust claims before bringing them in court. *See* 28 U.S.C. § 2675(a) (barring plaintiff from bringing an FTCA claim "unless the claimant shall have first presented the claim to the appropriate Federal agency and his [or her] claim shall have been finally denied by the agency in writing and sent by certified or registered mail."); McNeil v. United States, 508 U.S. 106, 113 (1993); Cotto v. United States, 993 F.2d 274, 280 (1st Cir. 1993) ("Exhaustion of

plaintiffs' administrative remedies is a jurisdictional prerequisite to the prosecution of ... FTCA claims.").

Before a tort action against the United States may be filed in federal court under the FTCA, the tort claim must first be "presented" to the appropriate federal agency "within two years after such claim accrues." *See* 28 U.S.C. § 2401(b). A regulation, 28 C.F.R. § 14.2(a), promulgated by the United States Department of Justice, fleshes out parts of this requirement. *See* Santiago-Ramirez v. Sec'y of Dep't of Def., 984 F.2d 16, 19 (1st Cir. 1993). It provides that a tort claim is "presented" within the meaning of § 2401(b) when the appropriate federal agency "receives" written notice of that claim. 28 C.F.R. § 14.2(a).[2] This requirement is "non-waivable [and] jurisdictional." Acosta v. U.S. Marshals Serv., 445 F.3d 509, 513 (1st Cir. 2006) (*quoting* Santiago-Ramirez, 984 F.2d at 18, 19-20). Here, the Government presents a jurisdictional challenge and argues that Plaintiff failed to exhaust his administrative remedies since: (1) the U.S. Attorney

[2] Section 14.2(a) provides in full:

> For purposes of the provisions of 28 U.S.C. 2401(b), 2672, and 2675, a claim shall be deemed to have been presented when a Federal agency receives from a claimant, his duly authorized agent or legal representative, an executed Standard Form 95 or other written notification of an incident, accompanied by a claim for money damages in a sum certain for injury to or loss of property, personal injury, or death alleged to have occurred by reason of the incident; and the title or legal capacity of the person signing, and is accompanied by evidence of his authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian, or other representative.

was an improper recipient of his SF95; and (2) CBP never received Plaintiff's claim. (Docket No. 23 at 10). Therefore, the factual dispute is whether the Government received Plaintiff's claim.

In support of their dismissal argument, Defendants submit a chain of e-mails with the Office of the Assistant Chief of Counsel of the CBP. (Docket No. 29-3). In these e-mails, Attorney Diana Espinosa states -after running a search of the "CBP Service Intake Box"- that the CBP "did not receive any correspondence from the plaintiff or his counsel from Dec. 2021 to Feb. 2022." (Id. at 1).

Sánchez avers that he complied with the presentment requirement by sending standard claim forms –SF95s– to both, the U.S. Attorney General for the District of Puerto Rico and CBP. (Docket No. 1 at 2). Plaintiff alleges in his Complaint that he received no response to his administrative claims. (Id.). He also provides a United States Postal Service's ("USPS") tracking number in his Complaint and supplemented his claim with a copy of his shipping receipts in his *Opposition to Motion to Dismiss*. (Docket Nos. 1 at 2 and 26-1).

Plaintiff insists that the CBP "was properly notified of the administrative claim via a SF95" sent to the proper address. Yet, in support and establish this Court's jurisdiction, he only provides a copy of the tracking number issued by the USPS tracking system. Notably, Plaintiff does not include a copy of the SF95 he

alleges that he submitted, nor any other evidence that controverts Defendants' assertion that CBP lacks any record of Sánchez, or someone acting on his behalf, having filed the SF95 or any other written notification of his tort claim. (Docket No. 26-1).

The Supreme Court has not examined the FTCA's presentment requirement, nor has the First Circuit squarely addressed whether the mailbox rule applies to claims under the FTCA such that mailing notice of a claim satisfies the statute's presentment requirement. *See* Velez-Diaz v. United States, 507 F.3d 717, 719 (1st Cir. 2007). (Addressing the mailbox rule). Nonetheless, most courts that have addressed the question have held that the common-law mailbox rule is inapplicable to FTCA claims. *See* Cooke v. United States, 918 F.3d 77, 82 (2d Cir. 2019) (*citing* Dep't of the Army v. Blue Fox, Inc., 525 U.S. 255, 261 (1999)) ("[T]he mailbox rule is inapplicable to claims brought under the FTCA, and ...therefore the mere mailing of a notice of claim does not satisfy the FTCA's presentment requirement. The statute and corresponding regulation make clear that actual receipt is required, and applying the mailbox rule to claims under the FTCA would be inconsistent with the principle that waivers of sovereign immunity must be strictly construed and limited in scope in favor of the sovereign."); *see also* Flores v. United States, 719 F. App'x 312, 317 n. 1 (5th Cir. 2018) ("The common law mailbox rule is inapplicable to the FTCA".);

Lightfoot v. United States, 564 F.3d 625, 628 (3d Cir. 2009) (holding that mailing an FTCA claim does not satisfy the presentment requirement when the agency did not receive the claim); Garland-Sash v. Lewis, 348 F. App'x 639, 643 (2d Cir. 2009) (*citing* Vacek v. U.S. Postal Serv., 447 F.3d 1248, 1252 (9th Cir. 2006) ("[V]irtually every circuit to have ruled on the issue has held that the mailbox rule does not apply to [FTCA] claims, regardless of whether it might apply to other federal common law claims."); Moya v. United States, 35 F.3d 501, 504 (10th Cir. 1994); Bellecourt v. United States, 994 F.2d 427, 430 (8th Cir. 1993); Drazan v. United States, 762 F.2d 56, 58 (7th Cir. 1985).

"An essential element of [an FTCA] claim is 'notification of the incident,' via 'an executed' SF95 or 'other written' document, 'accompanied by' a demand 'for money damages in a sum certain.'" Holloway, 845 F.3d at 489 (*citing* 28 C.F.R. § 14.2(a)). The mere existence of a USPS tracking number in the record is insufficient for the Court to reasonably infer that Sánchez sought to exhaust —much less exhaust— his administrative remedy obligations. Under these circumstances, the Court heeds the Supreme Court's instruction and strictly construes the FTCA filing requirements in favor of the government. *See* Ardestani v. INS, 502 U.S. 129, 129 (1991).

Considering the foregoing, the Court finds that Plaintiff failed to meet his burden of proving that he exhausted his administrative remedies and that this Court has subject-matter jurisdiction. Therefore, the Court finds that Plaintiff is barred from bringing this FTCA suit in federal court. The Court lacks jurisdiction and must dismiss Plaintiff's FTCA Complaint. *See* Rivera De Jesus v. Soc. Sec. Admin., 114 F.Supp.3d 1, 3 (D.P.R. 2015) (*quoting* McNeil, 508 U.S. at 113 ("The FTCA bars claimants from bringing suit in federal court until they have exhausted their administrative remedies.").Because the Court finds that it lacks subject-matter jurisdiction over Plaintiff's FTCA claim, it need not address the malicious prosecution cause of action brought pursuant to that statute.

B. Plaintiff's Fourth Amendment and Bivens Claim

"In Bivens, the [Supreme] Court held that a Fourth Amendment violation by federal agents, acting under color of governmental authority, gave rise to a cause of action for money damages against those agents in their individual capacities." González v. Vélez, 864 F.3d 45, 52 (1st Cir. 2017) (*citing* Bivens, 403 U.S. at 389). To substantiate a Bivens claim, a Plaintiff must prove that: (1) he or she was deprived of a Constitutional or federal legal right; and (2) the deprivation was caused by a person acting under color of the law. *See* Bivens, 403 U.S. at 392.

The Supreme Court then recognized that Bivens created an implied right of action in three limited circumstances: (1) "a claim against FBI agents for handcuffing a man in his own home without a warrant;" (2) "a claim against a Congressman for firing his female secretary;" and (3) "a claim against prison officials for failure to treat an inmate's asthma." Ziglar v. Abbasi, 582 U.S. 120, 140 (2017) (*citing* Bivens, 403 U.S. 388; Davis v. Passman, 442 U.S. 228 (1979); Chappell v. Wallace, 462 U.S. 296 (1983); Carlson v. Green, 446 U.S. 14 (1980)). Later, the High Court "specified that when a Bivens-type claim is lodged, the appropriate analysis must begin by determining whether the plaintiff is seeking to extend the Bivens doctrine to a new context," González, 864 F.3d at 52 (*citing* Ziglar, 582 U.S. at 138), or to a "new category of defendants." Hernandez v. Mesa, 140 S.Ct. 735, 743 (2020) (*quoting* Correctional Servs. Corp. v. Malesko, 534 U.S. 61, 68 (2001)). "While the boundaries of Bivens-type liability are hazy, the Supreme Court. . .[has] made plain its reluctance to extend the Bivens doctrine" beyond the three causes of action previously identified. González, 864 F.3d at 52-53 (emphasis added); *see also* Ziglar, 582 U.S. at 120.

In more recent cases, including Egbert v. Boule, 142 S.Ct. 1793 (2022), the Supreme Court has cautioned that "recognizing a cause of action under Bivens is 'a disfavored judicial

activity[,]'" and "'[e]ven a single sound reason to defer to Congress' is enough to require a court to refrain from creating such a remedy." Egbert, 142 S. Ct. at 1803 (*first quoting* Ziglar, 582 U.S. at 135; and *then quoting* Nestlé USA, Inc. v. Doe, 141 S. Ct. 1931, 1937 (2021)).

1. Whether Bivens Should Be Expanded

Plaintiff grounds his Bivens cause of action in an allegation that Garay, a CBP officer, violated his Fourth Amendment rights by procuring his indictment based on supposedly intentional false testimony in which Garay stated that Plaintiff knowingly possessed and transported false documents. In evaluating Plaintiff's claim, the Court applies the two-step analytical process as articulated in Ziglar and re-stated in Egbert. *See* Ziglar, 582 U.S. at 138; Egbert, 142 S. Ct. at 1803.

First, the Court must determine "whether the case presents 'a new Bivens context'—*i.e.*, is it 'meaningful[ly]' different from the three cases in which the Court has implied a damages action." Egbert, 142 S. Ct. at 1803 (alteration in original) (*quoting* Ziglar, 582 U.S. at 139). "A case might differ in a meaningful way because of the rank of the officers involved; the constitutional right at issue; the generality or specificity of the official action; the extent of judicial guidance as to how an officer should respond to the problem or emergency to be confronted; the statutory

or other legal mandate under which the officer was operating; the risk of disruptive intrusion by the Judiciary into the functioning of other branches; or the presence of potential special factors that previous Bivens cases did not consider." Ziglar, 582 U.S. at 139-40.

"Second, if a claim arises in a new context, a Bivens remedy is unavailable if there are 'special factors' indicating that the Judiciary is at least arguably less equipped than Congress to 'weigh the costs and benefits of allowing a damages action to proceed.'" Egbert, 142 S. Ct. at 1803 (*quoting* Ziglar, 582 U.S. at 136). "If there are alternative remedial structures in place, 'that alone,' like any special factor, is reason enough to 'limit the power of the Judiciary to infer a new Bivens cause of action.'" Id. at 1804 (*quoting* Ziglar, 582 U.S. at 137).

In sum, "the modern Bivens analysis involves a factual comparison to the facts of Bivens itself (or Davis, or Carlson, depending on the case), with an emphasis on avoiding any extension of Bivens to meaningfully new factual circumstances." Quinones-Pimentel v. Cannon, 85 F.4th 63, 70 (1st Cir. 2023).

a. New Context and New Category of Defendants

The Court thus begins by reviewing whether Plaintiff's Fourth Amendment claims present a "new context" under Supreme Court precedent. Here, Bivens is the most analogous of the three seminal

Supreme Court cases, since it involved a Fourth Amendment claim against federal agents. "[H]owever[,] this similarity, by itself, is insufficient to qualify this case as presenting the same context as in Bivens." Quinones-Pimentel v. Cannon, 85 F.4th at 70.

A factual analysis reveals several differences. The facts in Bivens involved a Fourth Amendment claim against federal line-level investigative officers who allegedly: (1) entered and searched a plaintiff's apartment without probable cause or a warrant; (2) arrested the plaintiff for alleged drug violations; (3) handcuffed the plaintiff in front of his family; (4) threatened to arrest his family; and (5) later interrogated, booked, and visually strip searched him. Bivens, 403 U.S. at 389. The facts of this case starkly differ than those of Bivens. The present matter involves Fourth Amendment claims against a CBP officer who allegedly gave false testimony against the Plaintiff before the Grand Jury in a criminal case. Comparing the cases' sets of facts, the Court finds that Plaintiff was neither handcuffed nor arrested nor subject to a warrantless search of his home or person.

Furthermore, neither the Supreme Court nor the First Circuit have expressly addressed whether the presentation or use of false or misleading evidence and/or testimony to the Grand Jury to secure an indictment presents a 'new context' for a Bivens claim. Yet, since Ziglar, several sister courts have declined to recognize a

Bivens action in the context of malicious prosecution, including claims and allegations similar to those presented here. *See, e.g.*, Boudette v. Sanders, No. 18-cv-02420, 2019 WL 3935168, at *5 (D. Colo. Aug. 19, 2019) (involving a malicious prosecution claim); Karkalas v. Marks, No. 19-cv-00948, 2019 WL 3492232, at *6-14 (E.D. Pa. July 31, 2019) (involving a claim for "unlawful prosecution and pretrial detention following allegedly false and misleading statements to a grand jury. . ."), aff'd, 845 F.App'x 114 (3d Cir. 2021). These courts have held that similar claims were "meaningfully different" from the claim in Bivens, irrespective of the defendants at issue. *See, e.g.*, Quinones-Pimentel v. Cannon, No. 20-cv-01443, 2022 WL 826344, at *7, *20 (D.P.R. Mar. 17, 2022) aff'd, 85 F.4th 63 (1st Cir. 2023) (declining to recognize a Fourth Amendment Bivens claim related to FBI agents allegedly "'formulating false and perjured evidence and statements to be used in support of the affidavit' for a search warrant, conspiring to file an affidavit under oath containing false information, and intentionally deceiving the Magistrate Judge to get her to issue the search warrant.").

In addition, as stated above, the Supreme Court has also refused to extend Bivens to a "new category of defendants." Ziglar, 582 U.S. at 135. Most recently, in Hernandez v. Mesa, the Supreme Court declined to create a damages remedy against a Border Patrol

agent, like Garay. In Egbert, the High Court likewise declined to extend Bivens liability to a claim against a Border Patrol officer.

The Court thus finds that this case presents a new Bivens context, as well as a new set of defendants. As such, the Court next considers whether there are "'special factors' indicating that the Judiciary is at least arguably less equipped than Congress to 'weigh the costs and benefits of allowing a damages action to proceed.'" Egbert, 142 S.Ct. at 1803 (*quoting* Ziblar, 582 U.S. at 136).

c. Special Factors Counseling Against Extension of a Bivens Remedy

As discussed, the existence of "alternative remedial structures[,]. . . like any special factor, is reason enough to 'limit the power of the Judiciary to infer a new Bivens cause of action.'" Egbert, 142 S.Ct. at 1804 (*quoting* Ziglar, 582 U.S. at 137). Here, as Defendants argue, there is an established remedial structure provided by the FTCA for monetary damages against the United States and its officers for losses caused by malicious prosecution. In addition, the secrecy of Grand Jury proceedings constitutes a "special factor" counseling against a Bivens action. *See* Farah v. Weyker, 926 F.3d 492, 499 (8th Cir. 2019). In that case, the Eighth Circuit explained that the plaintiff's claims alleging false information presented to the Grand Jury would require the court to determine "whether there was probable cause

to charge the plaintiffs with a crime that would have justified their detention pending trial." Farah, 926 F. 3d at 500. The court added that to determine whether the Grand Jury had probable cause to indict the plaintiff, the court would necessarily have to: (1) look at the Grand Jury record to see if probable cause existed; and (2) interview Grand Jury members to determine whether the allegedly false testimony influenced their return of an indictment. Id.

Another special factor cautioning the extension of Bivens to the present context is the potential effect on national security that may arise from grafting an implied damages action against CBP officers onto the remedial structure already provided by Congress, the Executive, and the Judiciary via separate avenues. *See* Hernandez, 140 S.Ct. at 746.

Expanding the Bivens remedy is now disfavored. Thus, under the rigorous two-step inquiry mandated by Supreme Court jurisprudence, it is difficult to infer a damages action for claims that differ in even modest ways from those advanced in Bivens and its progeny. Here, a principled application of this analysis leads to the conclusion that Sánchez may not pursue his constitutional claim against Garay in an implied action for damages. The Court, therefore, **GRANTS** Defendants' *Motion to Dismiss*.

The Court notes that Defendant's *Motion to Dismiss* raises claims of absolute and qualified immunity to Plaintiff's causes of action. However, the Court finds it unnecessary to consider the alleged defenses given its conclusions on other grounds that Plaintiff's FTCA and Bivens claims do not survive Defendant's *Motion to Dismiss*. Quinones-Pimentel v. Cannon, 85 F.4th at 75, n.12 ("as we conclude that Appellants' Bivens claims cannot move forward, we do not address Appellants' arguments as to absolute and qualified immunity.").

IV. CONCLUSION

For the foregoing reasons, the Court **GRANTS** Defendants' *Motion to Dismiss*. The Complaint is dismissed without prejudice and Judgment of Dismissal shall be entered accordingly.

IT IS SO ORDERED.

In San Juan, Puerto Rico, March 6, 2024.

s/Gina R. Méndez-Miró
GINA R. MÉNDEZ-MIRÓ
UNITED STATES DISTRICT JUDGE