

*SMITH v. UNITED STATES*: ELEVENTH CIRCUIT EMPHASIZES THAT THE  
FEDERAL TORT CLAIMS ACT DOES NOT WAIVE SOVEREIGN IMMUNITY  
ABSENT AN INDEPENDENT DUTY ARISING UNDER STATE LAW

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In *Smith v. United States*, the United States Court of Appeals for the Eleventh Circuit addressed whether the United States District Court for the Northern District of Georgia properly dismissed a Federal Tort Claims Act (“FTCA”) suit based on the sovereign immunity doctrine.<sup>1</sup> In *Smith*, the plaintiffs—family members and estate administrators of a father and daughter who died when their vehicle struck neighborhood mailboxes—filed an FTCA claim against the United States alleging that the United States Postal Service (“USPS”) was negligent in failing to inform the mailboxes owners that their mailboxes were not compliant with certain safety regulations.<sup>2</sup> The Eleventh Circuit affirmed the lower court’s dismissal, and held that the plaintiffs could not invoke the federal government’s waiver of sovereign immunity under the FTCA without identifying an underlying state-law duty that would establish liability for a private party engaged in the same conduct.<sup>3</sup>

In November 2016, Steve and Sydney Smith were involved in a single car accident, resulting in both their deaths.<sup>4</sup> Mr. Smith was driving while intoxicated when “[s]hortly after midnight, their car veered off the road and smashed into a pair of mailbox supports that belonged to two neighboring families.”<sup>5</sup> The plaintiffs sued the United States under the FTCA on the grounds that USPS’s negligence played a contributing role in the deaths of Steve and Sydney Smith.<sup>6</sup> Specifically, the plaintiffs argued that the materials used to support the mailboxes violated of a variety of federal, state, and local regulations and ordinances and that USPS’s “failure to notify the Homeowners of the non-conforming mailbox installations constituted negligence *per se* under Georgia law.”<sup>7</sup> In response to these claims, the United States moved to dismiss based on sovereign immunity, which the district court granted.<sup>8</sup> The plaintiffs appealed, arguing that the federal

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<sup>1</sup> *Smith v. United States*, 14 F.4th 1228 (11th Cir. 2021).

<sup>2</sup> *Id.* at 1230.

<sup>3</sup> *Id.* at 1233.

<sup>4</sup> *Id.* at 1230.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 1233.

<sup>7</sup> *Smith*, 14 F.4th at 1230.

<sup>8</sup> *Id.* at 1230.

government waived its sovereign immunity for this type of claim under the FTCA.<sup>9</sup>

The Eleventh Circuit reviewed district court's dismissal de novo and began its analysis by discussing the evolution of the sovereign immunity doctrine and its applicability to the FTCA.<sup>10</sup> The sovereign immunity doctrine "generally protects the United States and its agencies against suit."<sup>11</sup> The court explained that the "familiar doctrine" of sovereign immunity has roots going back to the Middle Ages,<sup>12</sup> and was "well established in English law" at the time of America's founding.<sup>13</sup> Bridging the gap between the doctrine's historical background and its present applicability, the court noted that the doctrine of sovereign immunity applied "at least not without permission"—meaning that suits against the United States could stand where the government explicitly waives its right to immunity.<sup>14</sup> The court explained that such waiver must be "unequivocally expressed in statutory text."<sup>15</sup> Even where such waivers are recognized, the waiver "must be strictly construed in favor of the United States' and 'not enlarged beyond what the language of the statute requires.'"<sup>16</sup>

Turning to the FTCA, the court explained that the statute was enacted to "allow[] those injured by the acts or omissions of a government employee to recover damages in the same way that they would if they were injured by the acts or omissions of a private person."<sup>17</sup> However, the court noted that

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<sup>9</sup> *Id.* at 1230, 1233.

<sup>10</sup> *Id.* at 1230–31.

<sup>11</sup> *Smith*, 14 F.4th at 1230–31.

<sup>12</sup> *Id.* at 1231 (quoting *The Siren*, 74 U.S. (7 Wall) 152, 153–54 (1868)).

<sup>13</sup> *Id.* (quoting *Alden v. Maine*, 527 U.S. 706, 715 (1999)). The sovereign immunity doctrine is encapsulated in the words of Blackstone, who wrote that "no suit or action can be brought against the king, even in civil matters, because no court can have jurisdiction over him." *Id.* (quoting WILLIAM BLACKSTONE, COMMENTARIES \*242).

<sup>14</sup> *Id.*

<sup>15</sup> *Smith*, 14 F.4th at 1231 (quoting *Fed. Aviation Admin. v. Cooper*, 566 U.S. 284, 290 (2012)).

<sup>16</sup> *Id.* (quoting *United States v. Idaho ex rel. Dir., Idaho Dep't of Water Res.*, 508 U.S. 1, 7 (1993)).

<sup>17</sup> *Id.* Specifically, the FTCA establishes federal court jurisdiction over negligence claims against the United States:

[T]he district courts . . . shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages . . . for injury or loss of property, or personal injury or death 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, *under 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.*

28 U.S.C. § 1346(b)(1) (emphasis added).

the FTCA contains two major limitations.<sup>18</sup> First, this waiver was “selective”—federal courts do not have jurisdiction over “claims concerning federal employee conduct that was outside the scope of employment . . . .”<sup>19</sup> Secondly, and “decisive here,” the court honed in on the fact that the FTCA only extends federal courts’ subject matter jurisdiction over claims against the United States “in which ‘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.”<sup>20</sup> According to the court, this provision limits the federal government’s waiver of sovereign immunity to instances where plaintiffs can show that a private party could be liable for the same acts or omissions under the state law where the injury occurred.<sup>21</sup>

Here, the plaintiffs argued “that the [USPS]’s negligence contributed to the Smiths’ deaths and that the United States waived its sovereign immunity for that negligence claim under the Federal Tort Claims Act.”<sup>22</sup> The Eleventh Circuit re-emphasized, however, that in order for the plaintiffs’ claim to survive dismissal, “they must plausibly allege that a private person would be liable to them for the accident under Georgia law.”<sup>23</sup> To support their claim, the plaintiffs pointed to Georgia’s recognition of the negligence *per se* doctrine as the underlying state-law tort. Specifically, the plaintiffs argued that “[USPS] was required to notify homeowners if their mailboxes did not conform to various safety standards, and that its failure to do so was negligence *per se* under Georgia law.”<sup>24</sup> The standards cited by the plaintiffs included “those set in postal service regulations, a Georgia statute that prohibits the obstruction of public roads, and a local ordinance that forbids the construction of mailboxes that are ‘fixed-object hazard to vehicles.’”<sup>25</sup>

The Eleventh Circuit rejected the plaintiffs’ argument for two reasons. First, the court explained that the “violation of a federal manual that arguably references state law” does not qualify as a state-law tort, even where the federal manual “arguably references state law . . . .”<sup>26</sup> Further, the court reasoned that even if the USPS manual established the “duty” alleged by the

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<sup>18</sup> *Smith*, 14 F.4th at 1232.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* (emphasis added) (citing 28 U.S.C. § 1346(b)(1)).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Smith*, 14 F.4th at 1233.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* “The problem for the plaintiffs is that the duty they allege would spring only from federal guidance – the Postal Operations Manual. But as we have said, to trigger liability under the Federal Tort Claims Act, a federal employee’s conduct must be “independently tortious under applicable state law.” *Id.* (quoting *Dalrymple v. United States*, 460 F.3d 1318, 1327 (11th Cir. 2006)).

plaintiffs, this duty would “arise[] only under federal law . . . . And without a state-law duty, there can be no state negligence claim for the violation of that duty.”<sup>27</sup> Second, the court stated that the plaintiffs’ reliance on Georgia’s negligence *per se* doctrine did not invoke jurisdiction under the FTCA because the “violation of a federal statutory duty does not automatically invoke state law principles of negligence *per se*.”<sup>28</sup> The court explained that to hold otherwise “would be a dramatic expansion of the [FTCA]’s waiver of sovereign immunity” because the federal government would be liable for violating a federal duty where no such liability exists for a private person “merely because a state recognizes the doctrine of negligence *per se* . . . .”<sup>29</sup> On that basis, the court concluded that the district court did not have subject matter jurisdiction since the plaintiffs “[did] not point[] [the court] to any state or local laws that require private parties to inform homeowners when their mailbox supports fail to comply with federal, state, or local requirements.”<sup>30</sup> Stated differently, “[b]ecause a private person would not be liable under state law for the allegedly tortious conduct identified by the plaintiffs, the [FTCA]’s waiver of sovereign immunity [did] not apply.”<sup>31</sup>

*Smith v. United States* establishes important guidance for plaintiffs who wish to assert an FTCA claim against the federal government. As the Eleventh Circuit emphasized, plaintiffs suing the federal government under the FTCA for the negligent actions of federal employees must be able to point to state law that establishes an independent source of duty by which a private party could be held liable.<sup>32</sup> Absent this underlying state-law duty, the sovereign immunity doctrine bars federal courts from adjudicating negligence claims under the FTCA.<sup>33</sup> Furthermore, plaintiffs cannot point to a state’s recognition of the negligence *per se* doctrine to hold the United States liable for a breach of duty established only by federal law.<sup>34</sup>

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<sup>27</sup> *Id.*

<sup>28</sup> *Id.* (quoting *Sellfors v. United States*, 697 F.2d 1362, 1367 (11th Cir. 1983)).

<sup>29</sup> *Smith*, 14 F.4th at 1234.

<sup>30</sup> *Id.* at 1233.

<sup>31</sup> *Id.* at 1234.

<sup>32</sup> *Id.* at 1233.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 1234.