

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 27 2026

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

OSIRIS TERRY,

Plaintiff - Appellant,

v.

SHAWN TABAR,

Defendant - Appellee.

No. 25-2875

D.C. No. 1:24-cv-00309-JAO-KJM

MEMORANDUM*

Appeal from the United States District Court
for the District of Hawaii
Jill A. Otake, District Judge, Presiding

Submitted August 25, 2026**

Before: SILVERMAN, N.R. SMITH, and DE ALBA, Circuit Judges.

Osiris Terry appeals pro se from the district court's judgment dismissing his federal law employment discrimination action. We have jurisdiction under 28 U.S.C. § 1291. We review de novo an order dismissing for lack of subject matter

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2). Terry's request for oral argument, set forth in the opening brief, is denied.

jurisdiction under Federal Rule of Civil Procedure 12(b)(1) or failure to state a claim under Rule 12(b)(6). *Galaza v. Mayorkas*, 61 F.4th 669, 671 (9th Cir. 2023). We affirm.

The district court properly dismissed Terry’s Fifth Amendment claim under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388, (1971) because Terry presents a new *Bivens* context and has already exercised an alternative remedy under Title VII. *See Chambers v. Herrera*, 78 F.4th 1100, 1104 (9th Cir. 2023) (“[W]e first examine whether this case presents a new *Bivens* context and, if so, whether Congress is better equipped to create a damages remedy.”).

The district court properly dismissed Terry’s Federal Tort Claims Act (“FTCA”) claims for negligence, intentional infliction of emotional distress, and defamation because the individual defendant is not the the proper defendant. *See Kennedy v. United States Postal Serv.*, 145 F.3d 1077, 1078 (9th Cir. 1998) (explaining that because “the United States is the only proper party defendant in an FTCA action,” dismissal of an individual defendant was proper).

The district court properly dismissed Terry’s Tucker Act claim seeking \$250,000 for reputational harm because the Court of Federal Claims has exclusive jurisdiction over this claim. *See McGuire v. United States*, 550 F.3d 903, 910-11 (9th Cir. 2008) (explaining that the jurisdiction is vested solely in the Court of

Federal Claims for Tucker Act claims seeking more than \$10,000 in damages).

The district court properly dismissed Terry's 42 U.S.C. § 1983 claim because Terry failed to allege facts sufficient to show that Tabar was a state official acting under color of state law. *See Daly-Murphy v. Winston*, 837 F.2d 348, 355 (9th Cir. 1987) (explaining that there is no valid basis for a claim under § 1983 against federal official acting under color of federal law).

AFFIRMED.