

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

SEP 11 2026

FOR THE NINTH CIRCUIT

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

MICHAEL ERWINE,

Plaintiff - Appellant,

v.

UNITED STATES OF AMERICA,

Defendant - Appellee,

and

ZACHARY WESTBROOK, JOHN
LEONARD, MICHEL HALL, GENE M.
BURKE, BENJAMIN TROTTER,
COUNTY OF CHURCHILL,

Defendants.

No. 25-3134

D.C. No.

3:24-cv-00045-MMD-CSD

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Miranda M. Du, District Judge, Presiding

Argued and Submitted March 11, 2026
Las Vegas, Nevada

Before: BENNETT and SANCHEZ, Circuit Judges, and HOLCOMB, District
Judge.**

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

** The Honorable John W. Holcomb, United States District Judge for the

Michael Erwine served as a police officer for the Washoe Tribe of Nevada and California (the “Washoe Tribe”). After Erwine was terminated, he filed suit against the United States, bringing two Nevada tort claims under the Federal Tort Claims Act, 28 U.S.C. §§ 2671 *et seq.* (“FTCA”).

The district court dismissed, concluding that Erwine failed to exhaust his administrative remedies. We have jurisdiction under 28 U.S.C. § 1291, and we reverse.

1. On October 18, 2019, Erwine began working as a police officer for the Washoe Tribe, a federally recognized Indian tribe. *See Indian Entities Recognized by and Eligible to Receive Services from the United States Bureau of Indian Affairs*, 89 Fed. Reg. 99899, 99902 (Dec. 11, 2024). The Washoe Tribe terminated Erwine’s employment on March 4, 2022. That day, the police chief met with Erwine, informed him he was being fired, and said the decision was final.

On April 24, 2023, Erwine utilized Standard Form 95 and submitted an administrative claim to the Department of Interior (“DOI”). Erwine described the basis for his claim:

On 3/4/22 Erwine was terminated from his position of a police officer with the Washoe Tribe of Nevada and California. Erwine was a tenured/ non-probatio[nary] employee and was subject to the Tribe’s disciplinary procedural due process protections, which Erwine did not receive. Erwine filed numerous grievances according to the policies and procedures of the Tribe and was denied any due process.

Central District of California, sitting by designation.

In a statement of facts appended to the form, Erwine explained that: at the meeting on March 4, the police chief “gave [Erwine] his ‘Personnel file’ which contained new charges of dishonest[y] . . . that were never previously addressed with [Erwine]”; Erwine was denied “the opportunity to file a grievance and respond to the allegations surrounding his termination”; Erwine had not “been found to have committed any misconduct which would warrant termination under the Tribe’s policies”; he was “not notified of all of his charges of misconduct”; and he “was denied a hearing and given no meaningful opportunity to be heard.”

The agency denied the claim on October 26, 2023. The denial letter stated: “According to the Standard Form 95, this claim arises from the termination of [Erwine] from his position as a police officer with the Washoe Tribe of Nevada and California on March 4, 2022. After reviewing this claim and the applicable law, I hereby deny this claim.”

Erwine then sued the United States under the FTCA for tortious discharge and bad faith discharge. Erwine contends that these claims arise against the United States “because the Washoe Tribal police are federal employees or agents acting under a Compact of Self-Governance of the Washoe Tribe.” *See Snyder v. Navajo Nation*, 382 F.3d 892, 897 (9th Cir. 2004) (explaining that Congress, pursuant to the Indian Self-Determination and Education Assistance Act of 1975, “provided that the

United States would subject itself to suit under the [FTCA] for torts of tribal employees hired and acting pursuant to such self-determination contracts”).

The United States moved to dismiss under Rule 12(b)(1), contending that Erwine failed to properly exhaust his administrative remedies.¹ The district court granted the motion, concluding that “Erwine’s Form 95 d[id] not sufficiently describe the injuries he alleges underlying his remaining claims against the United States to enable the DOI to begin an investigation into them.” In the district court’s view, Erwine alleged only “violations of his due process rights in his Form 95,” which “d[id] not put the DOI on reasonable notice of tortious or bad faith discharge under state law based on firing Erwine after he allegedly failed to obey unlawful orders.”

Erwine moved to reconsider under Rule 59(e). The district court denied the motion. The district court then granted, and the clerk entered, judgment for the United States pursuant to Rule 54(b).

2. A district court’s dismissal for failure to exhaust administrative remedies under the FTCA is a jurisdictional question that we review de novo. *See*

¹ The United States also urged that the factual allegations in Erwine’s complaint failed to establish plausible claims for tortious discharge and bad faith discharge under Rule 12(b)(6). The district court did not resolve the motion to dismiss on this ground, and the United States does not meaningfully develop this argument on appeal as an alternative basis to affirm, so we leave that issue for the district court to address on remand.

Shipek v. United States, 752 F.2d 1352, 1353 (9th Cir. 1985). “The jurisdiction of federal courts to entertain actions for damages against the United States is limited by the Federal Tort Claims Act (‘FTCA’).” *Warren v. U.S. Dep’t of Interior Bureau of Land Mgmt.*, 724 F.2d 776, 777 (9th Cir. 1984) (en banc). As a prerequisite to suit, the FTCA requires that, before filing an FTCA claim, a plaintiff must “first present[] the *claim* to the appropriate Federal agency.” 28 U.S.C. § 2675(a) (emphasis added). “After the agency has denied the claim or after six months have passed, whichever occurs first, the plaintiff may bring suit in federal court on the claim.” *Shipek*, 752 F.2d at 1353.

The FTCA does not define what constitutes a “claim” for the purpose of satisfying its exhaustion requirement. *See id.* at 1353 n.2. But we have interpreted the statute to “require[] the claimant or his legal representative to file (1) a written statement sufficiently describing the injury to enable the agency to begin its own investigation, and (2) a sum certain damages claim.” *Warren*, 724 F.2d at 780. Only the first prong is at issue.

We have emphasized that the FTCA’s notice requirement is “minimal.” *Shipek*, 752 F.2d at 1354; *see also Goodman v. United States*, 298 F.3d 1048, 1055–56 (9th Cir. 2002). As to the first prong, “a skeletal claim form, containing only the bare elements of notice of accident and injury,” we have explained, “suffices to overcome an argument that jurisdiction is lacking.” *Avery v. United States*, 680 F.2d

608, 610 (9th Cir. 1982). The FTCA’s exhaustion requirement does not “allow an agency to insist on proof of a claim to its satisfaction before the claimant becomes entitled to a day in court.” *Id.* at 611. Nor does it require a claimant “to state his legal theory for recovery.” *Rooney v. United States*, 634 F.2d 1238, 1242 (9th Cir. 1980). Thus, a plaintiff may bring any “any legal theory encompassed by the facts set forth in her [administrative] claim.” *Shipek*, 752 F.2d at 1356; *see also Goodman*, 298 F.3d at 1055 (“[A] plaintiff’s administrative claims are sufficient even if a separate basis of liability arising out of the same incident is pled in federal court.”).

3. The claim Erwine submitted to the DOI stated that he was injured by being terminated from his job as a tribal police officer. The tort claims in Erwine’s complaint arise out of the same injury. His tortious discharge claim alleges that he was wrongfully terminated for refusing to engage in conduct he believed to be unlawful, and his bad faith discharge claim asserts that he was not afforded the disciplinary process guaranteed by his employment contract.

Erwine provided sufficient facts to enable the DOI to begin investigating the circumstances of his termination. And that is precisely what the agency did. Its denial letter confirmed the agency understood that Erwine’s “claim arises from the termination of [Erwine] from his position as a police officer with the Washoe Tribe.” Further, it is telling that at oral argument, counsel for the United States could not

explain how the agency's investigation would have been different had Erwine's Form 95 mirrored his eventual complaint word for word.

Invoking the district court's reasoning, the United States contends that Erwine presented to the agency only a due process claim, which "was a different right, with a different source, than the state tort claims he asserted in his Complaint." But our precedent makes plain that Erwine's Form 95 was not required "to state his legal theory for recovery." *See Rooney*, 634 F.2d at 1242. Nor did his inclusion of a due process violation as one possible theory for relief exclude him from later asserting tortious or bad faith discharge theories in his federal complaint. *See id.* at 1242–43.

Erwine's Form 95 "sufficiently describe[ed] the injury to enable the agency to begin its own investigation." *See Warren*, 724 F.2d at 780. The FTCA's exhaustion requirement demands nothing more. Thus, the district court erred in dismissing Erwine's claims against the United States for failing to exhaust his administrative remedies.

4. Having determined that Erwine's FTCA claims should not have been dismissed on exhaustion grounds, we need not separately address Erwine's challenge to the district court's denial of his Rule 59(e) motion to reconsider.

REVERSED and REMANDED.