

## Highlights

Stay ahead in federal litigation with the Fall 2026 update to *Civil Actions Against the United States*, a leading treatise on sovereign immunity, administrative law, and federal tort liability. This supplement delivers authoritative analysis of 11 pivotal new decisions shaping civil litigation against the federal government.

### § 1:4 Bases for Waiver of Sovereign Immunity

- *Reinforces APA jurisdiction over equitable challenges to federal funding decisions*

#### **Illinois v. Noem, 813 F. Supp. 3d 282 (D.R.I. Dec. 22, 2025)**

Twelve states and D.C. challenged DHS's reallocation of \$1.2 billion in homeland security grants from "sanctuary cities" based on round-numbered percentage cuts without individualized assessments. The court held that the APA's waiver under 5 U.S.C. § 702 applies where plaintiffs seek equitable relief (injunction, vacatur), rejecting the government's Tucker Act jurisdictional defense. Confirms that monetary consequences of injunctive relief do not transform APA claims into "money claims."

#### **Washington v. FEMA, 818 F. Supp. 3d 195 (D. Mass. Dec. 11, 2025)**

Twenty-three states successfully challenged FEMA's termination of the BRIC program, which violated statutory mandates under the Stafford Act and IIJA. Court granted permanent injunction, emphasizing irreparable harm and APA's applicability to funding decisions lacking Congressional authorization.

#### **Michigan v. Noem, 819 F. Supp. 3d 1163 (D. Or. Dec. 23, 2025)**

Eleven states contested new FEMA grant conditions requiring population exclusions and shortened performance periods. Court reaffirmed APA jurisdiction, distinguishing equitable APA claims from Tucker Act money claims. Highlights that agencies must provide reasoned explanations when altering long-standing administrative practices.

### § 1:8 Particular Statutes as Waivers of Immunity

- *Clarifies limits on implied waivers under the False Claims Act*

**United States ex rel. Sargent v. Collins, 165 F.4th 102 (1st Cir. Jan. 22, 2026)**

A VA employee's FCA retaliation claim against the Secretary in official capacity was dismissed for lack of subject-matter jurisdiction. The court held that the FCA does not contain an express waiver of sovereign immunity for retaliation claims. Official-capacity suits are treated as suits against the government, and generic statutory language ("any employee") is insufficient to waive immunity.

§ 1:22 Appellate Jurisdiction

- *Clarifies procedural fairness in FTCA appeals*

**Parrish v. United States, 605 U.S. 376 (2025)**

Supreme Court ruled that a notice of appeal filed after the original deadline but before a district court reopens the time under Rule 4(a)(6) relates forward to the reopening date. No second notice is required. Reinforces procedural fairness and avoids technical dismissals where intent to appeal is clear.

§ 2:15 Definition of "Employee of the Government," Generally

- *Reaffirms the Logue control test for FTCA liability*

**Rodriguez v. United States, 2026 WL 689997 (W.D. Tex. 2026)**

Plaintiffs alleged injuries from a Texas DPS officer acting under USBP control. Court applied the *Logue* test, requiring federal control over detailed physical performance. Found insufficient allegations of federal supervision. Clarifies that 287(g) agreements are not the exclusive path to federal employee status, but plaintiffs must plausibly allege federal control.

§ 2:35 Intentional Tort Exception, Generally

- *Recognizes independent government duties as basis for negligence claims*

**Doe 1 v. United States, 166 F.4th 1255 (11th Cir. Feb. 3, 2026)**

Parents sued over child abuse at a government-run childcare center. Claims were not barred by the FTCA's intentional tort exception because they arose from the government's independent duty (under state law and Air Force regulations) to protect children, not from the employment relationship. Allows negligence claims where duty is independent of tortfeasor's status.

§ 2:43 Postal Matters Exception

## HIGHLIGHTS

- *Expands scope of FTCA immunity for intentional non-delivery*

**United States Postal Service v. Konan, 146 S. Ct. 736 (Feb. 24, 2026)**

Supreme Court held that the FTCA’s postal exception—covering “loss, miscarriage, or negligent transmission of letters”—applies even to intentional nondelivery of mail. Government retains sovereign immunity for such claims, reflecting congressional intent to limit tort liability for core postal functions.

### § 3:3 Limitations on Bivens Remedies

- *Forecloses Bivens claims for excessive force in federal prisons*

**Goldey v. Fields, 606 U.S. 942 (2025)**

Supreme Court declined to extend Bivens to Eighth Amendment excessive force claims in federal prisons, applying *Ziglar v. Abbasi*. Found context meaningfully different from *Carlson* (medical neglect). Cited congressional inaction, administrative alternatives, and systemic concerns as special factors. Reinforces that Bivens is a narrow, last-resort doctrine.

### § 6:2 Exclusion of Actions for Money Damages

- *Sharpens APA/Tucker Act jurisdictional divide*

**National Institutes of Health v. American Public Health Association, 145 S. Ct. 2658 (2025)**

Supreme Court held that APA jurisdiction does not extend to claims seeking reinstatement of terminated research grants, which are contractual and “money-mandating.” Such claims belong in the Court of Federal Claims under the Tucker Act. District courts may review agency guidance but cannot order restitution or funding restoration under the APA.

### § 6:50 Generally

- *Curbs use of universal injunctions in federal litigation*

**Trump v. CASA, Inc., 606 U.S. 831 (2025)**

Landmark decision limiting equitable authority to issue universal (nationwide) injunctions. Held that such relief exceeds traditional equitable powers and circumvents Rule 23 safeguards. Equitable relief must be coterminous with plaintiff’s injury. Signals that broader relief requires class certification or a showing of necessity for complete redress.