

United States Court of Appeals
for the Fifth Circuit

No. 23-40131
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

March 15, 2024

Lyle W. Cayce
Clerk

LAMONT FITCH,

Plaintiff—Appellant,

versus

UNITED STATES OF AMERICA; MERRICK B. GARLAND;
CHRISTOPHER WRAY; MICHAEL CARVAJAL; KATHLEEN HAWK
SAWYER; CHARELS L. LOCKETT; ET AL.,

Defendants—Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:20-CV-246

Before HIGGINBOTHAM, STEWART, and SOUTHWICK, *Circuit
Judges.*

PER CURIAM:*

Lamont Fitch, federal prisoner # 12384-050, appeals from the district court's denial of his motion for a preliminary injunction (PI). In his amended

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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complaint, Fitch alleged claims under *Bivens*¹ and the Federal Tort Claims Act (FTCA), but the district court severed the *Bivens* claims leaving only the FTCA claims in this case. The denial of a preliminary injunction is reviewed for an abuse of discretion but should be reversed “only under extraordinary circumstances.” *White v. Carlucci*, 862 F.2d 1209, 1211 (5th Cir. 1989). “[A] preliminary injunction is an extraordinary and drastic remedy which should not be granted unless the movant clearly carries the burden of persuasion.” *Canal Auth. v. Callaway*, 489 F.2d 567, 572 (5th Cir. 1974). In order to grant any sort of injunction, “the district court must have both subject matter jurisdiction and in personam jurisdiction over the party against whom the injunction runs.” *Enter. Int’l, Inc. v. Corporacion Estatal Petrolera Ecuatoriana*, 762 F.2d 464, 470 (5th Cir. 1985) (internal quotation marks and citation omitted).

Throughout these proceedings, Fitch has been imprisoned at the United States Penitentiary Victorville in California. However, he filed his instant complaint in the district court for the Eastern District of Texas, and he sought PI relief as to events and parties who were not located in the Eastern District of Texas. Given this context, the district court did not abuse its discretion by denying Fitch’s motion for PI.

Accordingly, the district court’s judgment is AFFIRMED. Fitch’s motions for appointment of counsel and for leave to file a supplemental document are DENIED.

¹ *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971).

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

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NEW ORLEANS, LA 70130

March 15, 2024

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing
or Rehearing En Banc

No. 23-40131 Fitch v. USA
USDC No. 1:20-CV-246

Enclosed is a copy of the court's decision. The court has entered judgment under Fed. R. App. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

Fed. R. App. P. 39 through 41, and Fed. R. App. P. 35, 39, and 41 govern costs, rehearings, and mandates. **Fed. R. App. P. 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following Fed. R. App. P. 40 and Fed. R. App. P. 35 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. Fed. R. App. P. 41 provides that a motion for a stay of mandate under Fed. R. App. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under Fed. R. App. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari.** Additionally, you MUST confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

Sincerely,

LYLE W. CAYCE, Clerk

Melissa Mattingly

By: _____
Melissa V. Mattingly, Deputy Clerk

Enclosure(s)

Mr. Lamont Fitch
Mrs. Andrea Lynn Hedrick Parker

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J U D G M E N T

This cause was considered on the record on appeal and the briefs on file.

IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED.

The judgment or mandate of this court shall issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. *See* FED. R. APP. P. 41(b). The court may shorten or extend the time by order. *See* 5TH CIR. R. 41 I.O.P.