

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

IN RE ALLAN DOUGLAS WILSON,
Petitioner,

No. 24-5210

PETITION FOR PANEL REHEARING

To the Honorable Judges of the United States Court of Appeals for the District of
Columbia Circuit:

Petitioner Allan Douglas Wilson, proceeding pro se, respectfully petitions for
panel rehearing of this Court's February 7, 2025 Order granting summary
affirmance. Rehearing is warranted because the Court's reliance on *Osborn v.*
Haley, 549 U.S. 225 (2007) overlooked a crucial factual distinction, the panel
misapplied the scope-of-employment analysis under D.C. Circuit precedent while
ignoring specific facts, and the district court's dismissal order created an
irreconcilable jurisdictional contradiction.

ARGUMENT

I. THE DISTRICT COURT'S DISMISSAL ORDER IS FUNDAMENTALLY CONTRADICTORY

The district court explicitly dismissed this case for lack of subject matter jurisdiction, yet failed to follow the mandatory remand requirement of 28 U.S.C. § 1447(c). This creates an impossible legal contradiction: the court simultaneously declared it had no jurisdiction while exercising jurisdiction through dismissal. As the Supreme Court held in *Ex parte McCardle*, 74 U.S. (7 Wall.) 506 (1869), "Without jurisdiction the court cannot proceed at all in any cause." The court's own finding of no jurisdiction negated its power to dismiss.

Section 1447(c) uses the mandatory language "shall be remanded" when a federal court lacks subject matter jurisdiction. The district court's failure to remand despite its explicit finding of no jurisdiction renders its dismissal order ultra vires and void. This fundamental error requires immediate correction to prevent continuing harm and restore proper jurisdiction.

II. THE PANEL OVERLOOKED A DISPOSITIVE DISTINCTION FROM OSBORN V. HALEY

The panel's Order relies on *Osborn v. Haley* for the proposition that a Westfall certification "renders the federal court exclusively competent and categorically precludes a remand to the state court." However, this reliance overlooks the Supreme Court's critical qualification in *Osborn* that such preclusion applies

specifically where the Government actively contests the plaintiff's factual allegations.

As the Supreme Court emphasized in *Osborn*, "The United States moved for reconsideration, urging that, contrary to the District Court's impression, the Government did contest *Osborn*'s factual allegations." *Osborn*, 549 U.S. at 234. This contest of facts was central to the Court's holding that remand was precluded. In contrast, the Government here has never contested *Wilson*'s factual allegations regarding the defamatory statements, rendering *Osborn*'s holding inapplicable to the present case.

III. SPECIFIC FACTS AND MISAPPLICATION OF LAW OVERCOME THE WESTFALL PRESUMPTION

The Westfall certification in this case suffers from multiple fatal deficiencies that warrant reconsideration. First, the certification itself is facially deficient, containing materially incomplete language as cited in the original Petition for Mandamus, and was issued by counsel with an apparent conflict of interest. The certification critically failed to evaluate whether admittedly false statements could fall within any legitimate scope of employment.

The record contains substantial evidence demonstrating that the original defendant's actions fell well outside any legitimate scope of employment. Most notably, the defendant made unauthorized medical diagnoses without any

medical qualification and without examining the Petitioner. The defendant also made unfounded criminal accusations entirely unrelated to the underlying civil rights complaint, offering no evidence to support these serious allegations. These defamatory statements remain undisputed as false, with no defense offered as to their truth or propriety.

The panel's decision overlooked these central facts that invalidate the Westfall certification. The original defendant's actions exceeded their official duties through unauthorized medical diagnoses, baseless criminal accusations, and responses that went far beyond any reasonable scope of a civil rights complaint response. These actions fundamentally differ from *Smith v. Clinton*, 886 F.3d 122 (D.C. Cir. 2018), where plaintiffs failed to provide 'specific facts' showing how the statements fell outside the scope of employment. Here, by contrast, both the nature and substance of the defendant's statements clearly exceeded legitimate governmental functions.

Furthermore, under *Wilson v. Libby*, this Circuit requires examination of the actual content of allegedly defamatory statements, an analysis conspicuously absent from the district court's dismissal order. The specific content here – comprising unauthorized medical diagnoses and baseless criminal accusations – demonstrates these statements exceeded any reasonable scope of employment. No legitimate governmental function encompasses making medical diagnoses without proper qualifications or issuing unfounded criminal accusations in response to a civil rights complaint. The statements serve no legitimate

governmental purpose and cannot reasonably be considered within any legitimate scope of employment for a government attorney responding to a civil rights complaint.

The panel's reliance on *Smith v. Clinton* is therefore misplaced. Unlike the *Smith* plaintiffs, Petitioner has presented concrete evidence demonstrating the defendant's actions fell outside any legitimate scope of employment, making this case materially distinguishable and warranting reversal of the panel's decision.

IV. ONGOING HARM REQUIRES IMMEDIATE CORRECTION

The improper removal and dismissal have created a continuing injury that compounds daily. The undisputed false statements remain unchallenged in federal court records, extending the period of unredressed defamation and amplifying the injury through federal court publications. The jurisdictional limbo has prevented access to timely state court remedies while creating additional forums for these false statements to persist. Only immediate correction of the district court's jurisdictional error can prevent further harm and restore proper access to judicial remedies.

SUMMARY

For the foregoing reasons, Petitioner respectfully requests that the panel grant rehearing to address the jurisdictional contradiction in the district court's

dismissal order, the mandatory remand requirement under 28 U.S.C. § 1447(c), the dispositive distinction from *Osborn v. Haley* regarding uncontested allegations, and the specific facts and points of law that overcome the Westfall presumption.

Respectfully submitted,



Allan Douglas Wilson, Pro Se
1321 Upland Drive STE 21311
Houston, Texas USA 77043

Date: February 13, 2025

CERTIFICATE OF COMPLIANCE

This petition complies with the type-volume limitation of Fed. R. App. P. 40(b) because it contains fewer than 3,900 words, excluding the parts exempted by Fed. R. App. P. 32(f).



Allan Douglas Wilson

ADDENDUM

CERTIFICATE AS TO PARTIES, AMICI CURIAE, AND DISCLOSURE STATEMENT

Pursuant to Circuit Rule 28(a)(1)(A) and Federal Rule of Appellate Procedure 26.1, Petitioner provides the following information:

A. Parties and Amici

The parties to this case are:

1. Petitioner: Allan Douglas Wilson, a licensed American life insurance agent and independent contractor residing in the Philippines, proceeding pro se
2. Respondent: United States of America

There are no intervenors or amici curiae in this case.

B. Disclosure Statement

Pursuant to Federal Rule of Appellate Procedure 26.1 and Circuit Rule 26.1, Petitioner Allan Douglas Wilson states that he is an individual proceeding pro se. He is a licensed American life insurance agent and independent contractor residing in the Philippines. He has no corporate interests to disclose, is not affiliated with any government agency, and does not represent any business entity or corporation with interests relevant to this litigation.

Respectfully submitted,



Allan Douglas Wilson, Pro Se
1321 Upland Drive STE 21311
Houston, Texas USA 77043

Date: February 13, 2025

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24-5210

September Term, 2024

1:23-cv-03826-CJN

Filed On: February 7, 2025

Allan Douglas Wilson,

Appellant

v.

United States of America,

Appellee

BEFORE: Childs, Pan, and Garcia, Circuit Judges

ORDER

Upon consideration of the motion for summary reversal and the motion for summary affirmance, the opposition thereto, and the reply, it is

ORDERED that the motion for summary affirmance be granted and the motion for summary reversal be denied. The merits of the parties' positions are so clear as to warrant summary action. See Taxpayers Watchdog, Inc. v. Stanley, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam). The district court correctly concluded that the United States is the proper defendant under the Westfall Act, and correctly denied appellant's motion to remand. See 28 U.S.C. § 2679(d)(2); Smith v. Clinton, 886 F.3d 122, 126-27 (D.C. Cir. 2018) (holding that "specific allegations of defamation" by a federal employee "do[] not take [the employee's] conduct outside the scope of employment"); Osborn v. Haley, 549 U.S. 225, 243 (2007) (holding that a Westfall certification "renders the federal court exclusively competent and categorically precludes a remand to the state court"). The district court also correctly dismissed appellant's case for lack of subject matter jurisdiction because appellant's libel claim falls under an exception to the government's waiver of sovereign immunity in the Federal Tort Claims Act. See 28 U.S.C. § 2680(h); Wuterich v. Murtha, 562 F.3d 375, 387 (D.C. Cir. 2009).

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

FOR THE COURT:

Clifton B. Cislak, Clerk

BY: /s/

Selena R. Gancasz

Deputy Clerk