IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

AKINDE THOMAS CHALWELL,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

CIVIL NO. 24-1290 (MAJ) (HRV)
(Consolidated with Civil No. 24-1344 (MAJ))

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

I. INTRODUCTION

Plaintiff Akinde Thomas Chalwell ("Chalwell" or "Plaintiff"), brought suit against the United States seeking to recover damages for what he claims are negligent and/or intentional acts of torture committed by the United States Coast Guard ("USCG") while he was detained for 36 days aboard several USCG cutters ("USCGC"). (Second Amended Complaint, Civil 24-1344 (MAJ), Docket No. 23). In its answer to the second amended complaint, the United States denied liability and asserted several affirmative defenses. (*Id.*, Docket No. 25).

Now pending before the Court is the United States' motion for judgment on the pleadings under Fed R. Civ. P. 12(c) wherein the government argues that Chalwell's claims should be dismissed because they are barred by the applicable statute of limitations. (Docket No. 25). Plaintiff opposes invoking the doctrine of equitable tolling. (Docket No. 29). This matter has been referred to me by the presiding District Judge for

report and recommendation. For the reasons set forth below, I recommend that the motion for judgment on the pleadings be GRANTED.

II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

I summarize the relevant factual background accepting as true the well-pleaded allegations in the amended complaint and drawing all reasonable inferences therefrom in Plaintiff's favor. *See United States v. U.S. Currency, $81,000,* 189 F.3d 28, 33 (1st Cir. 1999).

On June 16, 2022, the USCG detected a target of interest (TOI) in the high seas at approximately 25 nautical miles from St. Thomas, United States Virgin Islands. (Civil No. 24-1344 (MAJ), Docket No. 23, ¶6). Because the USCG suspected drug smuggling in international waters, it diverted the USCGC HERIBERTO HERNANDEZ to intercept the TOI. (*Id.*, ¶7). Upon arrival, USCG personnel observed a noncompliant target vessel jettisoning approximately 30 bales before becoming dead in the water. (*Id.*). USCG assets were deployed, boarded and gained control of the target vessel. (*Id.*).

There were three people on board, including Chalwell and Jerome Nibbs. (*Id.*, ¶8). The United States assumed jurisdiction after the master of the vessel made a verbal claim of British Virgin Islands nationality for himself and the vessel. (*Id.*). Subsequently, the government of the United Kingdom confirmed registry of the vessel, granted authority to board and search the same, and later waived jurisdiction for purposes of prosecution. (*Id.*). The boarding team recovered three (3) bales that tested positive to cocaine with an at-sea weight of approximately 90 kilograms. (*Id.*, ¶9). Chalwell and the other two persons on board were detained. (*Id.*).

On June 17, 2022, Chalwell was transferred to the USCGC HERIBERTO HERNANDEZ where he remained until June 19 when he was transferred to the USCGC RELIANCE. (*Id.*, ¶¶ 10, 12). On that same date, June 19, 2022, Chalwell was transferred back to the USCGC HERIBERTO HERNANDEZ. (*Id.*, ¶13). The following day, June 20, 2022, he was transferred to the USCGC DONALD HORSLEY. (*Id.*, ¶14). Between June 23, 2022, and July 22, 2022, Chalwell was transferred on at least seven occasions back and forth to and from different USCGCs, including the JOSEPH TEZANOS, the DONALD HORSELY, the JOSEPH DOYLE and the HERIBERTO HERNANDEZ. (*Id.*, ¶¶15-21). On July 22, 2022, Chalwell finally arrived in Puerto Rico an initially appeared before a magistrate judge. (*Id.*, ¶22).

Chalwell was allegedly subjected to the following inhumane conditions for 36 days:

- He was chained to the deck of multiple USCGs, exposed to the elements of rain, saltwater spray, and sun for weeks non-stop. At times when raining Plaintiff had to stand so the rainwater could run off, so his location could be free of water;
- He was given minimal food and water;
- He was hosed down "like a dog";
- He was ordered to defecate in presence of children while naked and urinate in the same manner in front of minor children both male and female;
- He was handcuffed and chained out in the rain with no available cover; and
- He was not provided bottled water and was given water drawn from the same utility hose he was hosed down with (bathing water), that the ensigns used to fill the cooler, (without any ice). Plaintiff complained about the taste of the water, and no action was taken.

(*Id.*, ¶23).

Plaintiff filed the original complaint *pro se* on August 1, 2024. (Civil No. 24-1344 (MAJ), Docket No. 2).[1] He subsequently amended the complaint on September 24, 2024. (*Id.*, Docket No. 13). In both pleadings, Chalwell asserted jurisdiction by invoking the Federal Tort Claims Act ("FTCA"). 28 U.S.C. §§ 1346(b)(1), 2671, *et seq*.

On December 19, 2024, Chalwell filed, this time through counsel, a second amended complaint. (*Id.*, Docket No. 23). This is the operative complaint, and jurisdiction was asserted for the first time under the Suits in Admiralty Act[2] ("SAA"), 46 U.S.C. § 30901, *et seq*. and the Public Vessels Act[3] ("PVA"), 46 U.S.C. § 31101, *et seq*. (*Id.*, ¶2). Plaintiff also cited the FTCA in the jurisdiction section of the second amended complaint. (*Id.*). Chalwell avers that due to the negligent and inhumane treatment that he suffered at the hands of USCG personnel in the different USCGCs, he has sustained severe emotional injuries. These officers, agents, and crewmembers of the USCG were at all times acting within the scope of their employment and agency, the second amended complaint further alleges. Chalwell requests $5,000,00.00 in compensation for his pain and suffering, moral anguish and psychiatric conditions. (*Id.*, ¶38).

On January 2, 2025, the United States filed its answer to the second amended complaint. (*Id.*, Docket No. 25). After the Court issued its case management order (*Id.*,

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[1] The envelop indicates that it was mailed on July 24, 2024. The envelop shows July 29, 2024, as the postmark date. (Civil No. 24-1344 (MAJ), Docket No. 2-3).

[2]The SAA specifically provides a waiver of sovereign immunity in cases where "if a vessel were privately owned or operated, or if cargo were privately owned or possessed, or if a private person or property were involved, a civil action in admiralty could be maintained." 46 U.S.C. § 30903.

[3]The PVA in turn waives sovereign immunity for "damages caused by a public vessel of the United States." 46 U.S.C. § 31102. A United States Coast Guard cutter is a public vessel of the United States. *See Harrington v. United States*, 748 F. Supp. 919, 929 (D.P.R. 1990).

Docket No. 29), the case was consolidated in the docket of the presiding District Judge in Civil No. 24-1290 (MAJ). (*Id.*, Docket No. 32; *see also* Civil No. 24-1290 (MAJ), Docket No. 23). The United States moved for judgment on the pleadings on February 28, 2025. (Docket No. 25). Chalwell opposed on March 7, 2025. (Docket No. 29). The United States replied (Docket No. 33), and Plaintiff surreplied. (Docket No. 36). The pending motion was referred to me for report and recommendation on April 24, 2025. (Docket No. 37).

III. APPLICABLE LAW AND DISCUSSION

A. Arguments of the Parties

The Government contends that Chalwell must establish a valid waiver of sovereign immunity to sue the United States. Because his claim falls under admiralty jurisdiction, the argument continues, the PVA is the only waiver of sovereign immunity for claims involving United States public vessels such as vessels owned and operated by the USCG. The Government further argues that the claim is barred by the applicable two-year statute of limitations and is not subject to equitable tolling under the facts and circumstances of this case.

Chalwell does not dispute that he filed his original complaint outside the limitations period. He opposes dismissal nonetheless attributing bad faith to the USCG for informing him that his FTCA administrative claim did not toll the statute of limitations under the SAA/PVA only after said limitations period had expired. Put differently, it is Plaintiff's position that "the Defendant waited on purpose to notify [him,] a pro-se imprisoned litigant, this [sic] his tort claim was an admiralty claim under the PVA and SAA, and that it did not toll the two-year filing deadline." (Docket No. 29 at 2).

In addition to contending that equitable tolling should be allowed in this case, Chalwell avers that the United States should be "equitably stopped [sic]" from raising the statute of limitations defense again because after receiving his FTCA administrative claim, the USCG waited one year and two months to inform him that his was an admiralty claim and failed to notify him of the applicable statute of limitations. (*Id.* at 4). Lastly, Chalwell insists that equitable tolling should be allowed because he acted diligently in pursuing his claims.

In its reply, the Government emphasizes that the USCG was under no obligation to inform Chalwell that his claims sounded in admiralty and were thus governed by the SAA/PVA and not the FTCA. (Docket No. 33 at 2). The United States also pushes back on the suggestion that equitable tolling should be allowed based on Chalwell's status as an imprisoned *pro se* litigant. (*Id.* at 3). Such status does not control any aspect of the equitable tolling analysis according to the Defendant. (*Id.* at 4).

In his surreply (Docket No. 36), Chalwell doubles down on his contention that he acted diligently and that the USCG acted in bad faith. He reiterates that he filed both his administrative claim and the original complaint within the timeframes contemplated by the FTCA, and that while the USCG did not have to answer the FTCA claim, it did so after the statute of limitations for PVA claims had expired, thus evincing bad faith. Chalwell adds that there will be no prejudice caused to the Defendant if the claim is allowed to proceed since the FTCA and the PVA causes of action are based on the same set of facts.

B. Legal Framework - Motion for Judgment on the Pleadings

Under Rule 12(c) of the Federal Rules of Civil Procedure, "[a]fter the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the

pleadings." Fed. R. Civ. P. 12(c). The First Circuit has explained that the standard of review applicable to Rule 12(c) motions "is the same as that for a motion to dismiss under Rule 12(b)(6)." *3137, LLC v. Town of Harwich*, 126 F.4th 1, 8 (1st Cir. 2025) (*quoting Marrero-Gutierrez v. Molina*, 491 F.3d 1, 5 (1st Cir. 2007)). "The 'modest difference' between the two [motions] is that a Rule 12(c) motion 'implicates the pleadings as a whole.'" *Id.* (*quoting Aponte-Torres v. Univ. of P.R.*, 445 F.3d 50, 54-55 (1st Cir. 2006)). To survive dismissal, the opposing party must show that the complaint contains sufficient factual assertions "to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007). Plausibility requires "more than labels and conclusions." *Id.* at 555. While a pleader does not need to demonstrate that [he] is likely to prevail on [his] claim, *Garcia-Catalan v. United States*, 734 F.3d 100, 102 (1st Cir. 2013), a court faced with a 12(b)(6) motion must decide whether the allegations in the complaint "raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555.

The First Circuit has also held that "[a] limitations defense may be asserted through a motion for judgment on the pleadings when it appears from the face of the properly considered documents that the time for suit has expired." *Jardin De Las Catalinas Ltd. P'ship v. Joyner*, 766 F.3d 127, 132 (1st Cir. 2014) (citations omitted). At this stage, and because the standard to apply is the same as under Rule 12(b)(6), the factual allegations in the complaint are accepted as true, and the court draws "all reasonable inferences in favor of the plaintiff." *Trans-Spec Truck Serv. v. Caterpillar, Inc.*, 524 F.3d 315, 320 (1st Cir. 2008) (*citing Garita Hotel Ltd. P'ship. v. Ponce Fed. Bank, F.S.B.*, 958 F.2d 15, 17 (1st Cir. 1992)).

C. Statute of Limitations under the SAA/PVA – Equitable Tolling

Although he originally sued under the FTCA, it is undisputed—and his counseled amended complaint acknowledges as much—that Chalwell's claims sound in admiralty. (Civil No. 24-1344 (MAJ), Docket No. 23, ¶2). Thus, the FTCA does not apply. *See* 28 U.S.C. § 2680(d) ("The provisions of this chapter and section 1346(b) of this title shall not apply to . . . [a]ny claim for which a remedy is provided by chapter 309 or 311 of title 46 relating to claims or suits in admiralty against the United States."). The SAA and the PVA provide the exclusive remedy for Chalwell's claims. *See* 46 U.S.C. § 30904 ("If a remedy is provided by this chapter, it shall be exclusive of any other action arising out of the same subject matter against the officer, employee or agent of the United States…"); *see also* 46 U.S.C. § 31103 ("A civil action under this chapter is subject to the provisions of chapter 309 of this title except to the extent inconsistent with this chapter."); *Ali v. Rogers*, 780 F.3d 1229, 1231 (9th Cir. 2015) (noting that the SAA and the PVA, "which are analogous to the Federal Tort Claims Act, waive the government's sovereign immunity in admiralty actions involving U.S. government-owned vessels, and in doing so provide the exclusive remedy for such actions.").

The limitations period applicable to claims under the PVA as borrowed from the SAA is two (2) years. 46 U.S.C. § 30905 ("A civil action under this chapter must be brought within 2 years after the cause of action arose."); *J-Way Southern, Inc. v. United States Army Corps. of Eng'rs.*, 34 F.4th 40, 46 n.5 (1st Cir. 2022); *Wilson v. U.S. Gov't.*, 23 F.3d 559, 561 (1st Cir. 1994) ("Causes of action under both Acts 'may be brought only within two years after the cause of action arises.'"). A cause of action "arises" on the date of injury. *Id.* (*citing McMahon v. United States*, 342 U.S. 25, 27, 72 S. Ct. 17, 96 L. Ed 26,

(1951)). Notwithstanding, it is also true that a plaintiff whose PVA action is untimely may invoke the doctrine of equitable tolling. *See Hedges v. United States*, 404 F.3d 744, 748 (3d Cir. 2005) (agreeing after surveying cases so holding that the SAA's two-year statute of limitation is not jurisdictional and thus subject to equitable tolling); *see also Wilson v. U.S. Gov't.*, 23 F.3d at 561.

"Generally, a litigant seeking equitable tolling bears the burden of establishing two elements: (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way." *Pace v. DiGuglielmo*, 544 U.S. 408, 418, 125 S. Ct. 1807, 161 L. Ed. 2d 669 (2005); *see also Holland v. Florida*, 560 U.S. 631, 649, 130 S. Ct. 2549, 177 L. Ed. 2d 130 (2010). The decision whether that burden has been met is committed to the court's discretion. *See Delaney v. Matesanz*, 264 F.3d 7, 13-14 (1st Cir. 2001). "Federal courts have allowed equitable tolling only sparingly." *Wilson v. U.S. Gov't.*, 23 F.3d at 561 (*citing Irwin v. Veterans Admin.*, 498 U.S. 89, 96, 111 S. Ct. 453, 112 L. Ed. 2d 435 (1990)).

D. Analysis

As noted above, there is no dispute that Chalwell filed the original complaint more than two years after the date of his injury which is when the cause of action arose. To be sure, based on the allegations in the second amended complaint, the last date his injury could have arisen is July 22, 2022, the date his custody was finally turned over by the USCG for federal prosecution. Thus, the original complaint filed on August 1, 2024, was filed outside of the two-year limitations period. Chalwell's cause of action can only be maintained, then, if he meets his burden of establishing entitlement to equitable tolling.

Equitable tolling requires a court to perform an individualized "'fact-intensive inquiry.'" *Holland v. Florida*, 560 U.S. at 654. In the case at bar, a review of the pleadings shows that on August 16, 2023, Chalwell submitted an administrative FTCA claim to the USCG. The same was received by the USCG on August 23, 2023, well within the two-year limitations period set forth by the FTCA. 28 U.S.C § 2401(b) ("A tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues or unless action is begun within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented.").[4] By February 22, 2024, six-months had gone by without any response from the USCG. As such, Chalwell was entitled to treat the inaction as a final denial. *See* 28 U.S.C. § 2675(a); *see also Estate of Barrett v. United States*, 462 F.3d 28, 36 (1st Cir. 2006) ("In short, Plaintiff may not file a tort claim in district court until (i) the agency finally denies the administrative claim, or (ii) six months pass without a final denial of the administrative claim -- whichever

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[4] Chalwell presented his administrative claim using Standard Form 95 as required by 28 C.F.R. § 14.2(a), which provides that:

> For purposes of the provisions of 28 U.S.C. 2401(b), 2672, and 2675, a claim shall be deemed to have been presented when a Federal agency receives from a claimant, his duly authorized agent or legal representative, an executed Standard Form 95 or other written notification of an incident, accompanied by a claim for money damages in a sum certain for injury to or loss of property, personal injury, or death alleged to have occurred by reasons of the incident.

28 C.F.R. § 14.2(a). Presentment requires the plaintiff to submit to the appropriate federal agency a "claim form or other written notification which includes (1) sufficient information for the agency to investigate the claims, and (2) the amount of damages sought." *Santiago-Ramirez v. Sec'y of Dept. of Def.*, 984 F.2d 16, 19 (1st Cir. 1993) (citing 28 U.S.C. § 2675(a)).

comes first."). Since Chalwell filed suit on August 1, 2024 (within six months of final denial through inaction as per 28 U.S.C. § 2401(b)), there is no question that the claim would have been timely if the FTCA applied. *See Roman-Cancel v. United States*, 613 F.3d 37, 43 (1st Cir. 2010) (noting that under 28 U.S.C. § 2401(b), plaintiff had six months from the date of denial of the administrative claim to bring suit).

The SAA/PVA, however, does not contain a similar administrative claim tolling provision. *See Williams v. United States*, 711 F.2d 893, 899 (9th Cir. 1983) ("The FTCA requires the submission of an administrative claim prior to bringing suit. 28 U.S.C. § 2675(a). The SAA does not. It was appellant's responsibility to follow the procedural requirements for both statutes."). Further, as the United States correctly points out, courts have held that the filing of an FTCA administrative claim does not toll the statute of limitations governed by the SAA/PVA. *See Bovell v. United States Dep't of Defense*, 735 F.2d 755, 757 (3d Cir. 1984); *Ammer v. United States*, 881 F. Supp. 1007, 1013 (D. Md. 1994) (collecting cases); *Dyer v. United States*, 827 F. Supp. 339, 340 (E.D. Pa. 1993). Chalwell mistakenly framed his claim under the incorrect waiver of sovereign immunity, which in turn caused him to bring an untimely action. And as I explain below, such mistake cannot form the basis of a finding of equitable tolling.

I find no merit in the contention that the Government acted in bad faith for failing to notify Plaintiff prior to the expiration of the limitations period that his claims were not FTCA claims, but rather claims under the SAA/PVA. While the Supreme Court has held that the equitable tolling doctrine may be applied "where the complainant has been induced or tricked by his adversary's misconduct into allowing the filing deadline to

pass." *Irwin*, 498 U.S. at 95-96, here, Chalwell cannot sustain a charge that he was intentionally deceived or tricked by the USCG into filing late.

Plaintiff concedes that the USCG did not have an obligation to respond to the erroneously filed FTCA administrative claim. Also, he has cited no authority for the proposition that an agency of the United States has a duty to correct apparent procedural or substantive errors by a plaintiff in pursuing his or her claims including appraising him or her of the applicable statute of limitations. The caselaw on this issue stands for the opposite. *See Magdalenski v. United States Gov't*, 977 F. Supp. 66, 72 (D. Mass. 1997) ("Defendant had no obligation to inform [the plaintiff] that the claim he filed . . . was insufficient for FTCA purposes because of the lack of a sum certain."); *see also Heckler v. Cmty. Health Servs.*, 467 U.S. 51, 63, 104 S. Ct. 2218, 81 L. Ed. 2d 42 (1984) (noting that "those who deal with the Government are expected to know the law and may not rely on the conduct of Government agents contrary to law."); *Robinson v. Dalton*, 107 F.3d 1018, 1022-23 (3d Cir. 1997) (limitations period for Title VII administrative complaint not tolled even when plaintiff relied on erroneous advice by EEO counselor).

Indeed, courts consistently have refused to apply equitable tolling even to situations where an adversary's misrepresentation caused a plaintiff to allow a filing period to lapse. *Hawaii v. United States*, 173 F. Supp. 2d 1063, 1066 (D. Haw. 2000) (refusing to apply equitable tolling finding that the record was devoid of any indication that Defendant engaged in trickery, deceit, or misconduct for not appraising plaintiff of the applicable statute of limitations.). The USCG's failure to notify Chalwell that his claims were governed by the SAA/PVA and the delay in responding to his erroneously filed FTCA administrative claim, did not relieve him of his obligation to "exercise due

diligence in preserving his legal rights." *Irwin,* 498 U.S. at 96. Diligent research would likely have revealed both the existence of the SAA/PVA cause of action as well as the applicable statute of limitations. *Farhat v. United States*, No. 21-7061, 2022 WL 2840483, 2022 U.S. App. LEXIS 20095, at *16 (10th Cir. July 21, 2022); *see also Wilson v. U.S. Gov't.*, 23 F.3d at 562 (refusing to extend the exceptional doctrine of equitable tolling to a party that failed to exercise due diligence in pursuing his claim.). Simply put, the doctrine of equitable tolling does not apply to "what is at best a garden variety claim of excusable neglect." *Irwin,* 498 U.S. at 96.

I must also reject Chalwell's contention that equitable tolling should be allowed in this case because no prejudice will be caused to the Defendant inasmuch as that the United States was aware of the claims as they are based on the same set of facts as the FTCA claim. It has been held that considerations of sympathy for the plaintiff or the lack of prejudice to the Government are insufficient to establish equitable tolling. *See Raziano v. United States*, 999 F.2d 1539, 1542 (11th Cir. 1993) (declining to "extend equitable tolling to cover cases in which the government, because of pre-suit [administrative agency action], knew about a claim that might be pursued against it in court."). The arguments that his late filing should be excused because he acted diligently in pursuing his claims and because he initiated this action as an incarcerated *pro se* litigant fare no better. A general assertion of having acted with diligence is also insufficient for a litigant to avail himself of the extraordinary remedy that is equitable tolling. *Justice v. United States,* 6 F.3d 1474, 1479-80 (11th Cir. 1993) ("Though his dereliction be only incidental, a generally diligent plaintiff who files late because of his own negligence typically may not invoke equity to avoid the statute of limitations.").

Similarly, Chalwell's *pro se* status did not insulate him from complying with procedural and substantive law. *Ahmed v. Rosenblatt*, 118 F.3d 886, 890 (1st Cir. 1997); *see also Hedges*, 404 F.3d at 753 (refusing to give any weight to plaintiff's *pro se* status in the equitable tolling analysis."). Equitable tolling is unavailable to Chalwell, and for that reason, judgment on the pleadings in favor of the United States is warranted.

IV. CONCLUSION

In view of the above, I recommend that the United States' motion for judgment on the pleadings be GRANTED and that Chalwell's second amended complaint be dismissed.

This report and recommendation is filed pursuant to 28 U.S.C. § 636(b)(1)(B) and Rule 72(d) of the Local Rules of this Court. Any objections to the same must be specific and must be filed with the Clerk of Court **within 14 days**. Failure to file timely and specific objections to the report and recommendation is a waiver of the right to appellate review. *See Thomas v. Arn*, 474 U.S. 140, 155 (1985); *Davet v. Maccorone*, 973 F.2d 22, 30–31 (1st Cir. 1992); *Paterson-Leitch Co. v. Mass. Mun. Wholesale Elec. Co.*, 840 F.2d 985 (1st Cir. 1988); *Borden v. Sec'y of Health & Human Servs.*, 836 F.2d 4, 6 (1st Cir. 1987).

IT IS SO RECOMMENDED

In San Juan, Puerto Rico this 3rd day of June, 2025.

S/Héctor L. Ramos-Vega
HÉCTOR L. RAMOS-VEGA
UNITED STATES MAGISTRATE JUDGE