United States Court of Appeals
For the Eighth Circuit

No. 25-3371

Waylen Sherman Block

Plaintiff - Appellant

v.

United States Government, et al.

Defendant - Appellee

Appeal from United States District Court
for the District of Minnesota

Submitted: October 30, 2026
Filed: November 4, 2026
[Unpublished]

Before STRAS, KOBES, and JUSTIN D. SMITH, Circuit Judges.

PER CURIAM.

Waylen Block appeals the district court's[1] orders dismissing his pro se action raising Eighth Amendment claims under Bivens v. Six Unknown Named Agents of

[1]The Honorable John R. Tunheim, United States District Judge for the District of Minnesota, adopting the report and recommendations of the Honorable John F. Docherty, United States Magistrate Judge for the District of Minnesota.

Fed. Bureau of Narcotics, 403 U.S. 388 (1971), and tort claims under the Federal Tort Claims Act (FTCA). Upon de novo review, we affirm. See Montin v. Moore, 846 F.3d 289, 292 (8th Cir. 2017) (standard of review).

We agree with the district court that Block's Eighth Amendment claims were not cognizable under Bivens, particularly because his deliberate indifference claim alleged a different mechanism of injury than that in Carlson v. Green, 446 U.S. 14 (1980), and thus presented a new context, with multiple factors--including the availability of an alternative remedy--counseling hesitation in extending the Bivens remedy. See Goldey v. Fields, 606 U.S. 942, 944 (2025) (per curiam) (no Bivens remedy for Eighth Amendment excessive force violations); Ziglar v. Abbasi, 582 U.S. 120, 141-49 (2017) (factors including existence of alternative remedy counseled against extending Bivens); Farah v. Weyker, 926 F.3d 492, 498-99 (8th Cir. 2019) (to determine whether Bivens claim exists, court must determine whether it requires extending Bivens to new context and, if so, whether special factors counsel hesitation before implying new cause of action; new context existed when same constitutional right was at issue but officer's conduct and mechanism of injury differed).

We also agree that the district court lacked subject matter jurisdiction over Block's FTCA claims under the discretionary function exception. See 28 U.S.C. § 2680(a) (discretionary function exception). The captain's decision to use black box restraints during Block's escorted trips was discretionary, as the pertinent regulation and Bureau of Prisons policy permitted the use of heightened restraints at officers' discretion, and the decision was based on or susceptible to policy considerations. See Herden v. United States, 726 F.3d 1042, 1046-47 (8th Cir. 2013) (en banc) (discretionary function exception requires considering whether challenged conduct involved element of choice instead of being controlled by mandatory statutes or regulations, and whether that choice was based on or susceptible to policy considerations); Dykstra v. U.S. Bureau of Prisons, 140 F.3d 791, 796 (8th Cir. 1998) (prison officials supervise inmates based upon multiple factors, which are inherently

grounded in policy considerations); 28 C.F.R. § 570.44 (restraints may be applied to inmate on escorted trip after considering purpose of trip and degree of supervision required). Accordingly, we agree that the district court lacked jurisdiction over the FTCA claims, and modify the dismissal of these claims to be without prejudice. See Hart v. United States, 630 F.3d 1085, 1091 (8th Cir. 2011).

The judgment is affirmed as modified. See 8th Cir. R. 47B. We deny Block's pending motion.
