



U. S. Department of Justice

Civil Division

Assistant Attorney General

Washington, D.C. 20530

JUN 15 2009

John Arthur Eaves, Jr., Esquire
John Arthur Eaves Law Offices
101 North State Street
Jackson, Mississippi 39201

Dear Mr. Eaves:

Thank you for your letter to the Attorney General regarding *Sanchez, et al. v. United States, et al.* Civil Action No. 3:09-cv-1260 (SEC), United States District Court for the District of Puerto Rico. Your letter was forwarded to me for response.

You urge the Attorney General to either direct a settlement of the case brought by your clients involving the Navy's activities on the Island of Vieques or, alternatively, direct that the career attorneys not "use the doctrine of Sovereign Immunity as a defense."

The litigation to which you refer was brought under the Federal Tort Claims Act (FTCA), a limited waiver of sovereign immunity enacted in 1946. Prior to 1946, there was no waiver of sovereign immunity for non-maritime torts. If a citizen was tortiously harmed by activities of the United States, his or her sole remedy was through the Congress. In enacting the FTCA, Congress was careful to exclude from the waiver of sovereign immunity cases that would implicate policy decisions of the elected branches of government. *See* 28 U.S.C. 2680(a) (the discretionary function exception). As the Supreme Court explained in *United States v. S.A. Empresa De Viacao Rio Grandense (Varig Airlines)*, 467 U.S. 797, 814 (1984), "Congress wished to prevent judicial 'second-guessing' of legislative and administrative decisions grounded in social, economic, and political policy through the medium of an action in tort."

Consequently, it is clear that the Department of Justice may not, consistent with limitations enacted by the Congress, choose to waive the threshold jurisdictional requirement that the activities at issue not be policy-based, in contrast to "run of the mine" torts such as negligence in the operation of motor vehicles as to which there are no policy implications. *See United States v. Gaubert*, 499 U.S. 315, 325 & n.7 (1991); *Dalehite v. United States*, 346 U.S. 15, 28 n.19 (1953) ("congressional thought was centered on granting relief for the run-of-the mine accidents, as distinguished from injury from performing discretionary governmental functions").

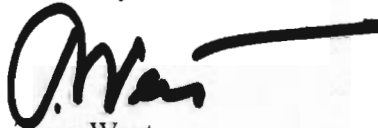
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Recently, in another case brought by citizens of Vieques, the applicability of the discretionary function exception was exhaustively analyzed, leading the district court in Puerto Rico to dismiss the suit as outside the FTCA's limited waiver of sovereign immunity. The district court's decision was affirmed by a unanimous panel of the United States Court of Appeals for the First Circuit. *See Abreu v. United States*, 468 F.3d 20 (1st Cir. 2006). Since we see no basis upon which the suit brought by your clients is pertinently distinguishable from the suit brought in *Abreu*, we have no choice but to follow the law and seek dismissal. The case is simply outside the limited waiver of sovereign immunity in tort enacted by Congress.

Of course, you are free to press your case that the United States Government ought to compensate citizens of Vieques but the United States District Court is not the correct forum for that presentation.

We hope this information is helpful. Thank you for your inquiry.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. West', with a long horizontal flourish extending to the right.

Tony West
Assistant Attorney General