Supreme Court of Texas

No. 25-0762

Texas Tech University,

Petitioner,

v.

Sonia Janeth Espinoza,

Respondent

On Petition for Review from the
Court of Appeals for the Seventh District of Texas

Argued November 5, 2026

JUSTICE YOUNG delivered the opinion of the Court.

After a traffic collision, respondent Sonia Espinoza sued Madyson Leita, a Texas Tech University employee acting within the scope of her employment at the time of the accident. Under the Texas Tort Claims Act, the suit was brought against Leita "in [her] official capacity only." Tex. Civ. Prac. & Rem. Code § 101.106(f). Such a suit is substantively against the governmental employer. For Espinoza to proceed against Texas Tech in this circumstance, § 101.106(f) required her pleadings to

formally name Texas Tech. The statute prescribes the next steps. It authorized Leita to file a motion to dismiss, which had to be granted "unless [Espinoza] file[d] amended pleadings dismissing [Leita] and naming [Texas Tech] as defendant on or before the 30th day after the date the motion [wa]s filed." *Id.* Espinoza did not act within thirty days of the motion. By the time she did, the statute of limitations had run, and because timeliness is jurisdictional in suits against the government, *see* Tex. Gov't Code § 311.034, the trial court properly granted Texas Tech's plea to the jurisdiction.

The court of appeals reversed, but in error. It regarded § 101.106(f) as "merely offer[ing] a mechanism to ensure the governmental entity is properly identified." ___ S.W.3d ___, 2025 WL 2046135, at *3 (Tex. App.—Amarillo July 21, 2025). But as the statute's text and this Court's precedents establish, § 101.106(f) does far more than the court of appeals held. We accordingly reverse that court's judgment and reinstate the trial court's judgment of dismissal.

* * *

The material facts are undisputed and matter primarily for the timeline of events. First, the accident occurred on December 3, 2021. Second, Leita was driving a Texas Tech vehicle and acting within the course and scope of her employment when she rear-ended the vehicle Espinoza was driving. Third, Texas Tech is a "governmental unit" for purposes of the Act. *See* Tex. Civ. Prac. & Rem. Code § 101.001(3) (defining "governmental unit"); *Univ. of Tex. Health Sci. Ctr. at San Antonio v. Bailey*, 332 S.W.3d 395, 397 n.5 (Tex. 2011) ("State universities and their component entities are governmental units within the meaning of the

Texas Tort Claims Act."). Fourth, Espinoza filed suit on November 17, 2023, less than three weeks before the expiration of the two-year limitations period for personal-injury suits. *See* Tex. Civ. Prac. & Rem. Code § 16.003(a). Fifth, the suit initially named only Leita as a defendant. Sixth, on January 12, 2024, Leita filed a motion to dismiss under § 101.106(f), explaining that Espinoza's claim arose out of "conduct within the general scope of [Leita's] employment with" Texas Tech. Seventh, Espinoza filed an amended petition naming Texas Tech as a defendant on March 5, 2024—53 days after Leita filed the motion to dismiss and 93 days after the statute of limitations expired. Eighth, Espinoza's amended petition named Texas Tech as a defendant but did not dismiss Leita; she was not formally dismissed from the lawsuit until the parties' subsequent agreement to do so, which was memorialized by a court order on March 13. Ninth, Texas Tech then filed a plea to the jurisdiction, which the trial court granted.

Given these facts, the trial court had no choice but to dismiss the suit. Section 101.106(f) provides as follows:

> If a suit is filed against an employee of a governmental unit based on conduct within the general scope of that employee's employment and if it could have been brought under this chapter against the governmental unit, the suit is considered to be against the employee in the employee's official capacity only. On the employee's motion, the suit against the employee shall be dismissed unless the plaintiff files amended pleadings dismissing the employee and naming the governmental unit as defendant on or before the 30th day after the date the motion is filed.

Leita's motion under this provision triggered the start of a thirty-day window for Espinoza to amend her pleadings to dismiss Leita and add Texas Tech as the named defendant. It is undisputed that she did not meet

that deadline. This failure mattered because Espinoza's lawsuit depends on the Act's waiver of sovereign immunity, which in turn requires "the procedures outlined in the statute [waiving immunity] [to] have been met." *Tex. Adjutant Gen.'s Off. v. Ngakoue*, 408 S.W.3d 350, 355 (Tex. 2013) (quoting *Mission Consol. ISD v. Garcia*, 253 S.W.3d 653, 660 (Tex. 2008)).

The statutory consequence of Espinoza's failure to amend her pleadings within the thirty-day window was dismissal: "If the plaintiff fails to substitute the government, and the employee was sued in his official capacity only, then the case *must be dismissed*." *Id.* at 359 (emphasis added) (citing § 101.106(f)). Dismissal under § 101.106(f) does not necessarily doom the chances of a plaintiff who fails to amend within the thirty-day period, however, because "such failure does not bar subsequent suit against the government." *Id.* at 358. The required dismissal, in other words, is without prejudice to refiling and naming the proper defendant.

But that escape hatch was closed to Espinoza. Even though she was not prohibited from filing a subsequent suit, she was "still subject to any other limitations with respect to suing the government, such as the statute of limitations or other procedural requirements that must be satisfied under the [Act]." *Id.* at 359 n.11. The general effect of dismissal is to treat dismissed claims "as though they had never been brought." *Studio E. Architecture & Interiors, Inc. v. Lehmberg*, 741 S.W.3d 67, 73 (Tex. 2026).

So even assuming that Espinoza's later effort to name Texas Tech constitutes an otherwise problem-free "subsequent suit against the government," her forfeiture of § 101.106(f)'s thirty-day period means that limitations had run by the time she sued Texas Tech. Limitations is more than an affirmative defense in this context; untimely suits against

governmental defendants are jurisdictionally barred. *See* Tex. Gov't Code § 311.034; *Tex. State Univ. v. Tanner*, 689 S.W.3d 292, 300–01 (Tex. 2024).

The court of appeals nonetheless reversed the dismissal of the lawsuit. Although Texas Tech's briefing thoroughly addressed *Ngakoue*, the court did not mention that case and instead relied primarily on this Court's earlier decision in *Bailey*. That case, however, is entirely consistent with the analysis we have sketched above. Indeed, far from supporting the court of appeals' conclusion, *Bailey* undermines it.

In *Bailey*, plaintiffs sued a defendant who, it later turned out, was a government employee acting in his official capacity. 332 S.W.3d at 397. The employee waited over a year—until just after limitations had expired—to file the § 101.106(f) motion to dismiss. *Id.* Plaintiffs then "complied" with the statute by amending their pleadings within the thirty-day period. *Id.* at 398. The newly substituted defendant (a state university, like Texas Tech here) then sought to invoke limitations on the ground that *it* had not been named before limitations had run. *Id.* at 399. We rejected that argument. The suit against the employee was, in substance, a suit against the employer, *id.* at 401–02, which is the point from *Bailey* that the court of appeals in this case emphasizes. The reason that this point mattered in *Bailey*, however, was that the substitution—even after limitations had run—did not add a truly new defendant but just properly named one who had been there all along. After all, we explained, "[s]ubstitution of the [employer] as the defendant was not automatic; [the employee] was required to file a motion." *Id.* at 401. That motion, in turn, told the plaintiffs what they had to do to avoid dismissal and the need for refiling: amendment within thirty days. The

plaintiffs' compliance meant that they timely effected the substitution, *id.* at 398, just as in *Ngakoue*, where the governmental unit was added as a defendant before the thirty-day period ended, 408 S.W.3d at 352. Had the plaintiffs in *Bailey* not amended in time, § 101.106(f) would have required dismissal, and the timeliness of any new effort to sue the university would have been measured not by their original filing date but by the date on which the plaintiffs named the government as the defendant.

No less than *Ngakoue*, in other words, *Bailey* confirms what § 101.106(f) plainly states: that amended pleadings within the thirty-day period are essential to avoid dismissal and any consequences that might flow from dismissal, such as a claim's being time-barred. *Bailey* clarifies that defendants cannot game the system—that waiting until limitations has run to reveal that the government should be the named party will not deprive plaintiffs of the thirty-day safe harbor to amend their pleadings. But the court of appeals was wrong to think that § 101.106(f)'s express reference to dismissal does not constitute the consequence of a plaintiff's failure to act within the thirty-day window.

In short, the court of appeals' premise is correct: a suit like this one against a governmental employee in her official capacity is, in all but name, a suit against the governmental employer. That principle is well established in Texas law. It is literally what § 101.106(f) says and what this Court has reiterated over and over again. *See, e.g.*, *Ngakoue*, 408 S.W.3d at 356; *Bailey*, 332 S.W.3d at 401–02; *Franka v. Velasquez*, 332 S.W.3d 367, 382 & n.68 (Tex. 2011); *Tex. A&M Univ. Sys. v. Koseoglu*, 233 S.W.3d 835, 844 (Tex. 2007). But that unremarkable premise provides no authority for disregarding § 101.106(f)'s direction about what a plaintiff

must do to successfully maintain such a lawsuit.

The trial court lacked jurisdiction to entertain the suit and properly granted Texas Tech's plea to the jurisdiction. The court of appeals should have affirmed, and because it did not, we reverse its judgment and dismiss the case for lack of jurisdiction.

Evan A. Young
Justice

OPINION DELIVERED: November 20, 2026