

FOR PUBLICATION

OPINION

T.G. NELSON, Circuit Judge:

Lucia Lima De Oliveir Papa and her six children appeal

In 1993, an attorney representing the Papas filed administrative claims with the INS on behalf of Mauricio Papa's estate and his survivors. The INS denied the claims on November 22, 1993, in a letter to the Papas' attorney. The letter stated that after an investigation, the INS had determined that no negligence on the agency's part contributed to Mr. Papa's death and that the agency therefore lacked liability under the FTCA. The letter also explained that the Papas had six months from the date of denial within which to file suit in a United States District Court. None of the Papas filed suit within six months of the denial of their administrative claims.

In 1998, the Papas hired a different attorney and filed claims in a federal district court for the first time. The Papas filed a first amended complaint on March 26, 1999. That complaint alleged violations of federal, state, and international law by the United States, the INS, and 100 John Does. The district court granted the defendants' motion to dismiss with prejudice on November 15, 1999. The court dismissed the appellants' Bivens claims on the ground that Mr. Papa, as an alien seeking entry into the United States, was not entitled to due process protection. Alternatively, the court held that the Papas had failed to meet the heightened pleading standard required in federal court. The court dismissed the

district court properly dismissed the remaining claims. Accordingly, we affirm in part, and reverse and remand in part.

II

Standard of Review

We review de novo the district court's dismissal for failure to state a claim or for lack of subject matter jurisdiction.

We conclude that the Bivens claims of Ms. Papa and the two oldest children, as well as the claims of Papa's estate, are untimely, a point the Papas appear to concede in their reply brief. However, the claims of the four youngest appellants, Wesleano, Kerly, Luciene, and Cirlene, are timely.

four minor children's claims was tolled until they reached the age of majority or filed suit.

The defendants' argument that any tolling ended in 1993 fails. In 1993, the appellants did not litigate the claims they now seek to raise. They only filed administrative claims.¹⁵ Accordingly, we conclude that their actions did not end the tolling provided by the California statute.¹⁶ Therefore, the Bivens claims of Wesleano, Kerly, Luciene, and Cirlene Papa are timely. We now turn to the alternative reasons for dismissal provided by the district court.

The district court dismissed the appellants' Bivens claims on the ground that the Due Process Clause does not protect aliens seeking entry into the United States. Alternatively, the court held that the Papas ha Tc O.ert hightlend pslerdine ~~Bivens~~. appellants arghe

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have either left open the question of whether the TVPA pro-

of limitations.³⁷ The nature of the violations suffered by those the ATCA, like the TVPA, was designed to protect will tend to preclude filings in United States courts within a short time. Accordingly, we reject the district court's adoption of the California statute of limitations and adopt the ten-year statute of limitations provided by the TVPA instead. Applying that statute, the Papas' claims are timely.

We also reject the district court's second reason for dismissing the Papas' ATCA claims. Relying on a case from the Southern District of Texas, a case the Appellees cite before this court as well, the district court concluded that the ATCA

