

The Good Samaritan Act

A Step in the Right Direction

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Congress recently passed the "Federal Law Enforcement Officers' Good Samaritan Act of 1998". The express purpose of the Act is to protect Federal Law Enforcement Officers who intervene in certain situations to protect life or prevent bodily injury.

It is axiomatic that there is no Federal law which generally authorizes a Federal Law Enforcement Officer to enforce state law. Indeed, prior to the passage of the Good Samaritan Act, there was no federal statute which expressly authorized a Federal Law Enforcement Officer who spontaneously encountered a non-Federal violent crime in progress or other emergency situation to take action to protect the public. In consequence, courts have ruled that a Federal Law Enforcement Officer who intervened in such a case would be acting as a private individual rather than a Federal employee acting within the scope of his or her employment. The Officer who is found to be acting as a private individual could potentially suffer the detrimental consequences of incurring significant legal expenses to defend him or herself in a law suit as well as being denied an important legal defense such as qualified immunity, which is a defense especially applicable to Law Enforcement Officers. The Good Samaritan Act provides Federal Law Enforcement Officers protection against common law tort liability, i.e. negligence, assault, battery, false arrest and Constitutional tort liability (Bivens suits) if (i) the Officer was protecting an individual from a crime of violence; (ii) the Of-

ficer was providing immediate assistance to an individual who suffered or was threatened with bodily harm; or (iii) the Officer was preventing the escape of an individual who committed a violent crime in the presence of the Officer. Under the Federal Tort Claims Act, Federal employees have absolute immunity for common law torts (negligence, assault, battery, false arrest) if the action giving rise to the tort occurred "within the scope" of the workers employment. For instance, if a Federal Agent, acting within the scope of employment, was involved in an automobile accident with third parties while attempting to effect the arrest of a drug smuggler or some other felon, the Agent would have absolute immunity in a negligence civil suit. According to the Federal Tort Claims Act, the United States would be substituted for the Agent as the defendant in the suit, and the Agent would face no personal financial liability if the suit was successful. Significantly, the Good Samaritan Act provides, that for the purposes of the Federal Tort Claims Act, a Federal Agent is deemed to be acting within the scope of his or her employment if the agent intervenes in a crime of violence, to prevent bodily harm or to prevent the escape of an individual who has committed a crime of violence in his or her presence. The legislation provides protection, by eliminating personal liability, to Federal Agents who are sued for negligence or other torts arising out of their intervention in the non-Federal context.

The Federal Tort Claims Act does

not extend the absolute immunity protection to Agents who are personally sued for committing Constitutional torts as opposed to common law torts. A Constitutional tort (otherwise known as a Bivens suit) is a suit usually for violation of the fourth or fifth amendment to the United States Constitution involving search and seizure and arrest action. Although the absolute immunity defense is not available for Constitutional torts because such torts are not covered by the Federal Tort Claims Act, Agents do enjoy a qualified immunity, as opposed to absolute immunity, for Constitutional torts as long as the Agent can demonstrate that he or she was acting within the scope of employment. Specifically, the defense of qualified immunity attaches as long as the Agent can demonstrate that he or she did not violate any clearly established constitutional right of which a reasonable person would be aware, and the Agent is acting within the scope of his or her employment. If an Agent, acting within the scope of his or her employment can demonstrate that he or she did not violate a clearly established constitutional right then the court will dismiss the suit regardless of the merits of the claim. The Good Samaritan Act affords federal agents intervening in emergency situations as described above, a presumption that he or she is acting within the scope of employment for purposes of establishing the qualified immunity defense in a Constitutional or civil suit. Prior to the passage of the Good Samaritan Act, if an

Continued on page 12

*Good Samaritan Act
continued from page 5*

Agent intervened in a violent confrontation and it was ultimately alleged by one of the parties that the Agent violated his or her constitutional rights, and the Agent was deemed to be acting as a private individual not within the scope of his or her employment, the qualified immunity defense would not be available to the Agent.

Extending the federal scope of employment to non-federal crimes of violence committed in the presence of a federal agent, also affords the agent the opportunity to be defended in any civil suit by the Department of Justice at government expense. Although the government's obligation to defend is discretionary the government will not choose to defend any agent who is deemed not to have acted within the scope of employment. Hence, the Good Samaritan Act affords the agent the potential for such defense as a result of intervening in an emergency violent situation.

The Good Samaritan Act does not mandate that the government indemnify the agent for any damages suffered by the agent if a Bivens civil suit is ultimately successful. Although by virtue of the Good Samaritan Act, an agent who intervenes in an emergency situation would have the benefit of the qualified immunity defense, as well as the potential to be represented by the Department of Justice, in the event of a successful suit against the agent, money damages imposed in a Bivens suit assessed personally against the agent will not necessarily be paid by the government. This is true not only with respect to the types of emergency incidents covered by the Good Samaritan Act, but also with respect to all damages resulting from Constitutional torts via a Bivens suit. It is therefore necessary, that agents obtain private liability insurance which will indemnify the agent for Constitutional torts.

The Constitutional tort or Bivens action is a judicially created remedy

and it would appear to be in the best interest of law enforcement that Congress amend the Federal Tort Claims Act to afford absolute immunity to agents sued under a constitutional tort theory. The need for Federal Tort Claims Act reform will be taken up in a later issue of this publication.

Not every Federal law enforcement agent is covered by the Good Samaritan Act. The Act is extended only to a "Law Enforcement Officer" as defined at Section 8401 of Title 5, United States Code. Suffice it to say that Special Agents who are classified in the 1811 series and who enjoy "6(c)" retirement coverage are covered by the Act. Many other law enforcement positions not qualified as "1811" (i.e. Probation and Pre-Trial Service Officers, 1801 General Investigators) may also be covered and a full analysis of these positions and their relationship to the new Act will be undertaken in an upcoming issue of *The 1811*.