

1 **WO**

2  
3  
4  
5  
6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 Shantelle Sloan,

10 Plaintiff,

11 v.

12 United States of America, et al.,

13 Defendants.  
14

No. CV-16-08059-PCT-DGC

**ORDER**

15  
16 Plaintiff asserts claims against several Navajo Nation police officers (“Individual  
17 Defendants”) for unlawful arrest and excessive force, and against the United States for  
18 negligent supervision and other torts. Doc. 1. The United States moves to dismiss  
19 Plaintiff’s negligent supervision claim pursuant to Federal Rule of Civil Procedure  
20 12(b)(6). Doc. 8. The motion is fully briefed (Docs. 14, 15) and no party requests oral  
21 argument. The Court will grant the motion with leave to amend.

22 **I. Background.**

23 The allegations in the complaint are taken as true for purposes of this motion. On  
24 November 20, 2014, Plaintiff called the Navajo police because she wanted help removing  
25 someone from her home. Doc. 1, ¶ 6. The Individual Defendants arrived and entered  
26 Plaintiff’s home without permission. ¶ 7. “Plaintiff was violently and injuriously  
27 grabbed by the arm and forcibly removed from her home,” and the Individual Defendants  
28 “wrongfully arrested Plaintiff, without any reasonable belief that she had committed any

1 offense.” ¶ 8. One of the Individual Defendants “shoved Plaintiff against the police car,  
2 pulled her arm as high as he possibly could and caused Plaintiff to suffer a painful bone  
3 fracture.” ¶ 9. Plaintiff was never charged with any offense. ¶ 11. Plaintiff alleges that  
4 the Individual Defendants were employed by a federal contractor at the time of the  
5 incident and were therefore federal employees for purposes of the Federal Tort Claims  
6 Act (“FTCA”). ¶ 3.

7 Plaintiff’s first claim for relief asserts that “[t]he United States is vicariously liable  
8 for the failure of the Individual Defendants, as federal officers, to conform to their legal  
9 duties as police officers.” ¶ 13. She asserts that the United States failed to exercise care  
10 in supervising, training, and hiring its officers. ¶ 14. She contends that this failure  
11 directly caused her injuries. ¶ 15.

## 12 **II. Legal Standard.**

13 A successful Rule 12(b)(6) motion must show either that the complaint lacks a  
14 cognizable legal theory or fails to allege facts sufficient to support its theory. *Balistreri*  
15 *v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). A complaint that sets forth a  
16 cognizable legal theory will survive a motion to dismiss as long as it contains “sufficient  
17 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’”  
18 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S.  
19 544, 570 (2007)). A claim has facial plausibility when “the plaintiff pleads factual  
20 content that allows the court to draw the reasonable inference that the defendant is liable  
21 for the misconduct alleged.” *Id.* (citing *Twombly*, 550 U.S. at 556). “The plausibility  
22 standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer  
23 possibility that a defendant has acted unlawfully.” *Id.* (citing *Twombly*, 550 U.S. at 556).

## 24 **III. Analysis.**

25 Judge Humetewa recently dismissed a virtually identical claim brought by the  
26 attorney now representing Plaintiff. Judge Humetewa explained:

27 FTCA actions “are governed by the law of the place where  
28 the act or omission causing the injury occurred.” *Mundt v. United*  
*States*, 611 F.2d 1257, 1259 (9th Cir. 1980) (citing 28 U.S.C. §  
1346(b)). For an employer to be held liable for negligent

1 supervision under Arizona law, a plaintiff must demonstrate (1) that  
2 the employer knew or should have known that the employee was not  
3 competent to perform the assigned task and (2) that the employer's  
4 failure to supervise the employee caused the plaintiff's injury. *See*  
5 *Rice v. Brakel*, 233 Ariz. 140, 145 (Ariz. Ct. App. 2013) (citing  
6 *Humana Hosp. Desert Valley v. Superior Court*, 154 Ariz. 396, 400  
7 (Ariz. Ct. App. 1987)).

8 In the Complaint, Plaintiff only alleges that Defendant Toddy  
9 was "an employee of a federal contractor under the ISDEAA" and  
10 therefore "a federal employee under the Federal Tort Claims Act."  
11 (Doc. 1 at 1-2, ¶ 3). He concludes that because Toddy was a federal  
12 employee under the FTCA, the United States is "vicariously liable  
13 for the failure of the Navajo Nation to conform to its legal duty" to  
14 supervise Toddy. (*Id.* at 3, ¶ 8).

15 These conclusive statements do not allege, or even suggest,  
16 that the United States knew that Toddy was not competent to  
17 perform his law enforcement duties. As such, the facts as pled in the  
18 Complaint do not allow the Court to reasonably infer that the United  
19 States is liable for Toddy's alleged misconduct, and therefore fall far  
20 short of the plausibility standard set forth in *Iqbal* and *Twombly*. *See*  
21 *Iqbal*, 556 U.S. 662, 678 (citing *Twombly*, 550 U.S. at 556). Nor  
22 does Plaintiff sufficiently allege the causation element with the  
23 conclusory assertion that the United States' failure to supervise  
24 Toddy "caused Defendant Toddy's abuse of Plaintiff and the  
25 damages suffered by Plaintiff." (Doc. 1 at 3, ¶ 9). A bare recitation  
26 of the legal elements of a claim will not save the claim from  
27 dismissal.

28 *Slim v. United States, et al.*, No. 15-CV-00785-DJH (D. Ariz., Jan. 4, 2016) (Doc. 19 at  
4-5).

Plaintiff's claim in this case fails for similar reasons. Nowhere does Plaintiff  
allege that the arresting officers were not competent to perform their duties, that their  
employer knew or should have known that they were not competent, or that the employer  
failed to supervise or train them. The Court declines Plaintiff's invitation to assume these  
facts from the fact that her arm was broken during the police visit to her home.

"Leave to amend should be granted if it appears at all possible that the plaintiff  
can correct the defect." *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000). It appears  
that Plaintiff may be able to cure her negligent supervision claim by alleging additional  
facts. Therefore, the Court will grant leave to amend. After filing an amended  
complaint, Plaintiff's counsel and government's counsel shall confer regarding any  
remaining deficiencies that might be corrected by further amendment. *See* Doc. 7.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Defendant's motion states that Plaintiff's counsel failed to respond to defense counsel's efforts to comply with Doc. 7. *See* Doc. 8 at 1 n.2. All attorneys shall comply fully with the Court's orders in the future.

**IT IS ORDERED** that the United States' motion to dismiss (Doc. 8) is **granted**. Plaintiff may file an amended complaint on or before **July 22, 2016**.

Dated this 30th day of June, 2016.



---

David G. Campbell  
United States District Judge