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UNITED STATES DISTRICT COURT

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EASTERN DISTRICT OF CALIFORNIA

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11 LUIS ALBERTO MENDEZ JIMENEZ,

No. 2:17-cv-01914-JAM-KJN

12 Plaintiff,

13 v.

**ORDER GRANTING DEFENDANT UNITED
STATES OF AMERICA'S MOTION TO
DISMISS**14 UNITED STATES OF AMERICA;
15 COUNTY OF SACRAMENTO; and
DOES 1-20, inclusive,

16 Defendants.

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18 Luis Alberto Mendez Jimenez ("Plaintiff") sued the United
19 States of America and the County of Sacramento for their
20 respective roles in Plaintiff's detention, attempted suicide, and
21 resulting injuries. Defendant United States of America (the
22 "United States") moves to dismiss Plaintiff's claims against it
23 on jurisdictional grounds. For the reasons set forth below, the
24 Motion to Dismiss is granted.¹

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27 ¹ This motion was determined to be suitable for decision without
28 oral argument. E.D. Cal. L.R. 230(g). The hearing was
scheduled for January 30, 2018.

1 I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

2 The following facts are taken as true for the purposes of
3 this motion:

4 On August 15, 2016, Immigration Customs Enforcement ("ICE")
5 officers apprehended Plaintiff in San Jose, California, on
6 suspicion of being present in the United States without
7 authorization. First Amended Complaint ("FAC"), ECF No. 11-1,
8 ¶ 10. The officers detained him in San Jose, California. Id. at
9 ¶ 11. Plaintiff signed a voluntary departure form on August 15,
10 2016, before Deportation Officer J. Freer. Id. Plaintiff was
11 given a Notice to Appear form by Deportation Officer Galvez for
12 an unscheduled hearing before an Immigration Judge. Id. Upon
13 his arrest, Plaintiff informed the ICE officers of his
14 psychological condition and previous incidents of self-harm. Id.
15 He asked permission to go to his home to retrieve his psychiatric
16 medications, but the officers denied the request. Id.

17 Sometime after his arrest on August 15, 2016, Plaintiff was
18 transferred and placed into immigration detention at Rio
19 Consumnes Correctional Center ("RCCC") in Elk Grove. Id. at
20 ¶ 12. During his intake he informed staff of his psychological
21 history, treatment, and past incidents of self-harm. Id. at
22 ¶ 13. He informed them of his medication and need to continue
23 taking it. Id. On October 23, 2016, while housed at RCCC,
24 Plaintiff attempted to commit suicide by jumping from an elevated
25 location and striking his head and upper body on the surface
26 below. Id. at ¶ 15. As a result, Plaintiff suffers from
27 injuries including tetraplegia, neurogenic bowel and bladder,
28 spinal cord injuries, fractures at and near the C-6 vertebra,

1 scalp lacerations, functional deficits, respiratory failure,
2 traumatic brain injury, and other injuries. Id.

3 Plaintiff sued the United States of America, the County of
4 Sacramento, and individual officers (Does) in this Court under
5 the Federal Tort Claims Act (the United States), Fifth Amendment
6 (individual U.S. Officers), California Tort Claims Act (County of
7 Sacramento), and 42 U.S.C. § 1983 (individual County Officers).
8 The parties filed a Stipulation for Leave to File a First Amended
9 Complaint and the FAC was deemed filed upon the Court's signing
10 of the Order. ECF Nos. 11 & 12.

11 12 II. OPINION

13 A. Request for Judicial Notice

14 Plaintiff seeks judicial notice of excerpts from the
15 Performance-Based National Detention Standards issued by U.S.
16 Immigration and Customs Enforcement. ECF No. 18-7. The United
17 States has not opposed this request. The document appears to be
18 a government document, available on a government website, and a
19 source whose accuracy cannot reasonably be questioned. See Fed.
20 R. Evid. 201; Baires v. United States, No. C 09-05171 CRB, 2011
21 WL 6140998 (N.D. Cal. Dec. 9, 2011) (stating that the 2007
22 National Detention Standards appear to meet the Rule 201
23 standard). The Court takes judicial notice of these standards.

24 B. Legal Standard

25 The United States seeks to dismiss Plaintiff's Federal Tort
26 Claims Act ("FTCA") claims under Federal Rule of Civil Procedure
27 12(b)(1), arguing that the Court lacks jurisdiction to decide
28 these claims.

1 "A Rule 12(b)(1) jurisdictional attack may be facial or
2 factual." Safe Air for Everyone v. Meyer, 373 F.3d 1035, 1039
3 (9th Cir. 2004). A facial attack challenges the sufficiency of
4 the complaint based on the allegations contained in the
5 complaint. Id. "By contrast, in a factual attack, the
6 challenger disputes the truth of the allegations that, by
7 themselves, would otherwise invoke federal jurisdiction." Id.

8 The United States attacks jurisdiction on both facial and
9 factual grounds.

10 C. Federal Tort Claims Act Claims

11 "It is elementary that '[t]he United States, as sovereign,
12 is immune from suit save as it consents to be sued . . . , and the
13 terms of its consent to be sued in any court define that court's
14 jurisdiction to entertain the suit.'" United States v. Mitchell,
15 445 U.S. 535, 538 (1980) (quoting United States v. Sherwood, 312
16 U.S. 584, 586 (1941)). "The United States has waived its
17 sovereign immunity with regard to tort liability under the
18 Federal Tort Claims Act 'under circumstances where the United
19 States, if a private person, would be liable to the claimant in
20 accordance with the law of the place where the act or omission
21 occurred.'" Chadd v. United States, 794 F.3d 1104, 1108 (9th
22 Cir. 2015) (citing 28 U.S.C. § 1346(b)(1)). But this waiver has
23 some exceptions, two of which pertain to this case.

24 The first exception bars suits under FTCA for actions taken
25 by a "contractor" working with the United States. 28 U.S.C.
26 § 2671. "The critical test for distinguishing an agent from a
27 contractor is the existence of federal authority to control and
28 supervise the 'detailed physical performance' and 'day to day

1 operations' of the contractor, and not whether the agency must
2 comply with federal standards and regulations." Carrillo v.
3 United States, 5 F.3d 1302, 1304 (9th Cir. 1993) (quoting Ducey
4 v. United States, 713 F.2d 504, 516 (9th Cir. 1983)).

5 Second, "the discretionary function exception retains the
6 United States's sovereign immunity for '[a]ny claim ... based
7 upon the exercise or performance or the failure to exercise or
8 perform a discretionary function or duty on the part of a federal
9 agency or an employee of the Government, whether or not the
10 discretion involved be abused." Id. (citing 28 U.S.C.
11 § 2680(a)). This exception protects "legislative and
12 administrative decisions grounded in social, economic, and
13 political policy" from judicial second guessing. Id.

14 Courts apply a two-step inquiry to evaluate whether a claim
15 falls into this exception. First, the Court must examine whether
16 the government's actions were discretionary in nature; that is,
17 if a statute or policy directs mandatory and specific action,
18 then there is no element of discretion involved and the inquiry
19 ends. Id. at 1109. If the actions did involve an element of
20 judgment, then the Court asks whether the government actions and
21 decisions were susceptible policy analysis. Id. "The exception
22 protects only government actions and decisions based on social,
23 economic, and political policy." Miller v. United States, 163
24 F.3d 591, 593 (9th Cir. 1998). If the actions taken, by their
25 nature, are not susceptible to policy analysis, then the
26 exception does not apply. Chadd, 794 F.3d at 1109.

27 The United States asserts that each of these exceptions
28 apply to Plaintiff's FTCA claims.

1 D. Analysis

2 1. Control Over County and County Officers

3 Preliminarily, Plaintiff concedes that the United States did
4 not closely supervise the detention of Plaintiff and others at
5 RCCC and does not oppose the United States' motion to dismiss the
6 allegations regarding Plaintiff's detention at RCCC as to the
7 United States. Opp. at 1. Essentially, Plaintiff acknowledges
8 that the "contractor" exception precludes his FTCA claim insofar
9 as it is premised on the County's and County Officers' actions.
10 See Logue v. United States, 412 U.S. 521 (1973) (an employee for
11 a county jail—contracted for services by the United States but
12 whose personnel is not under United States' control—was found not
13 to be an employee of a federal agency for the purposes of the
14 FTCA). In light of Plaintiff's concessions, the Court dismisses,
15 with prejudice, the FTCA claim inasmuch as it is based on the
16 County's and County Officers' alleged actions.

17 2. Failure to Provide Medical Care

18 Removing those allegations from the picture, Plaintiff's
19 FTCA claim is premised on the ICE officers' failure to give
20 Plaintiff necessary medical care upon detaining him. FAC at
21 ¶ 20. This failure includes their denying his request to go home
22 to get his medication. Opp. at 5.

23 The United States argues that it cannot be held liable for
24 these decisions because the FTCA's discretionary function
25 exception applies.

26 Plaintiff points the Court to ICE's "Performance-Based
27 National Detention Standards 2011 (Revised 2016)" ("PBNS") for
28 the specific provisions regarding medical practices during

1 transfers of detainees to different facilities. *Opp.* at 5-7.

2 The ICE officers, he argues, violated these provisions when they
3 failed to ascertain what medicine Plaintiff needed and prevented
4 him from retrieving it. *Id.* at 7.

5 These standards are inapplicable. The standards Plaintiff
6 cites apply to "the following types of facilities housing ICE/ERO
7 detainees: Service Processing Centers (SPCs); Contract Detention
8 Facilities (CDFs); and State or local government facilities used
9 by ERO through Intergovernmental Service Agreements (IGAs) to
10 hold detainees for more than 72 hours." PBNDS at 257. The sub-
11 sections Plaintiff cites set forth procedures for medical
12 providers at the enumerated detention facilities to follow with
13 respect to detainees in their care. *See* PBNDS at 276
14 ("Continuity of Care"), 278 ("Transfer of Medical Information"),
15 457 ("Expected Outcomes"), and 459 ("Responsibilities of the
16 Health Care Provider at the Sending Facility"). There is no
17 indication—explicit or implicit—that these standards apply to
18 arresting officers transporting a new detainee to a detention
19 center following arrest and initial processing at a sub-office.
20 *See Galvez Decl.*, ECF No. 16-2, ¶¶ 5-7, 12. Plaintiff has failed
21 to identify a statute, regulation, or policy that dictates a
22 mandatory and specific action not taken here. The decision,
23 therefore, involves the exercise of discretion.

24 The second line of inquiry also favors the United States.
25 The decision whether or not to permit an arrestee to return home
26 to retrieve medication is a decision susceptible to social,
27 economic, and political policy analysis. *See Miller*, 163 F.3d at
28 593. In deciding whether to return to an arrestee's home, an

1 arresting officer might weigh the risks to their own, fellow
2 officers', detainee's, and bystanders' safety, as well as the
3 propriety of deferring to the detention facilities' medical staff
4 and intake procedures. Therefore, this decision is discretionary
5 and falls into the discretionary function exception.

6 3. False Imprisonment

7 Lastly, Plaintiff argues that the United States is liable
8 under the FTCA for false imprisonment because Plaintiff signed a
9 voluntary departure form upon arrest but was thereafter detained.
10 Opp. at 9.

11 The FAC does not allege a false imprisonment claim against
12 the United States. See FAC; Rep. at 1. Plaintiff's false
13 imprisonment theory of liability is fleshed out in his proposed
14 Second Amended Complaint, but not the operative complaint.
15 Compare ECF No. 18-5 with ECF No. 11-1. The FTCA claim cannot
16 move forward on a theory Plaintiff failed to allege.

17 E. Leave to Amend

18 "Dismissal with prejudice and without leave to amend is not
19 appropriate unless it is clear . . . that the complaint could not
20 be saved by amendment." Eminence Capital, LLC v. Aspeon, Inc.,
21 316 F.3d 1048, 1051-52 (9th Cir. 2003). But the Court need not
22 grant leave to amend where amendment would be futile.
23 Deveraturda v. Globe Aviation Security Services, 454 F.3d 1043,
24 1049 (9th Cir. 2006).

25 Plaintiff has failed to identify any statute or policy that
26 would mandate action in the circumstances alleged in the First
27 Amended Complaint. Amendment would be futile and is therefore
28 denied.

1 As to Plaintiff's new claim for false imprisonment, the
2 arguments concerning the claim are best addressed in the pending
3 Motion to Amend. ECF No. 20. The Court reserves its decision on
4 whether to allow Plaintiff to go forward on this claim until the
5 Motion to Amend has been fully briefed and argued.

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III. ORDER

8 For the reasons set forth above, the Court GRANTS WITH
9 PREJUDICE the United States' Motion to Dismiss Plaintiff's FTCA
10 claim predicated on the failure to provide medical care and
11 actions by the County and County Officers.

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IT IS SO ORDERED.

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Dated: February 8, 2018

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JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE

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