

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

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

LUIS ALBERTO MENDEZ JIMENEZ,

Plaintiff,

v.

UNITED STATES OF AMERICA;  
COUNTY OF SACRAMENTO; and  
DOES 1-20, inclusive,

Defendants.

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

**ORDER GRANTING DEFENDANT UNITED  
STATES OF AMERICA'S MOTION TO  
DISMISS**

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

///

---

<sup>1</sup> This motion was determined to be suitable for decision without 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.

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

III. ORDER

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

IT IS SO ORDERED.

Dated: February 8, 2018



JOHN A. MENDEZ,  
UNITED STATES DISTRICT JUDGE