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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-1914-JAM-KJN

**ORDER DENYING IN PART AND  
GRANTING IN PART PLAINTIFF'S  
MOTION TO AMEND**

Following the United States' filing of its Motion to Dismiss, Luis Alberto Mendez Jimenez ("Plaintiff") filed a Motion for Leave to File a Second Amended Complaint under Federal Rule of Civil Procedure 15(a). For the reasons set forth below, Plaintiff's motion is DENIED insofar as it alleges new facts and claims against the United States and individual United States officers and GRANTED as to the unopposed allegations against the County Defendants.<sup>1</sup>

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<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 March 13, 2018.

1 I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

2 The factual allegations in this case are set forth in the  
3 Court's Order Granting Defendant United States of America's  
4 Motion to Dismiss, ECF No. 24, and are incorporated herein.

5 In Plaintiff's proposed Second Amended Complaint ("SAC"),  
6 ECF No. 20-1, he further alleges that at the time he was arrested  
7 he executed DHS Form I-286, "Notificacion de Derechos y Solicitud  
8 de Resolucion" ("Notification of Rights and Application of  
9 Resolution). SAC ¶ 21. He signed the form—which was written  
10 entirely in Spanish—and in so doing waived his rights to a  
11 hearing before an immigration court and requested immediate  
12 deportation to his country of origin, Mexico. Id. Despite this  
13 consent, the Immigration and Customs Enforcement ("ICE") agents  
14 gave Plaintiff a Notice to Appear written entirely in English,  
15 without explaining the inconsistencies between the two forms.  
16 Id. Instead of processing Plaintiff for expeditious deportation,  
17 the ICE agents confined Plaintiff by transporting him for  
18 detention at RCCC, causing delay in processing and releasing  
19 Plaintiff. Id. at ¶ 22.

20  
21 II. OPINION

22 A. Legal Standard

23 Under Rule 15(a), leave to amend is to be freely granted  
24 when justice so requires. Fed. R. Civ. P. 15(a). Courts  
25 consider five factors in determining whether to grant such leave:  
26 "bad faith, undue delay, prejudice to the opposing party,  
27 futility of amendment, and whether the plaintiff has previously  
28 amended the complaint." Johnson v. Buckley, 356 F.3d 1067, 1077

1 (9th Cir. 2004). "Futility alone can justify the denial of a  
2 motion to amend." Id. (citation omitted). The party opposing  
3 amendment bears the burden of demonstrating any ground for  
4 denying the motion. Clark v. Citizens of Humanity, LLC, No. 14-  
5 CV-1404 JLS (WVG), 2016 WL 4597527, at \*2 (S.D. Cal. May 3,  
6 2016).

7 B. FTCA Claim

8 Plaintiff seeks leave to add allegations supporting his  
9 Federal Tort Claims Act ("FTCA") claim against the United States  
10 for failure to provide medical care and to add a new claim for  
11 false imprisonment. See Mot., Exh. A, ECF No. 20-1. The Court  
12 already denied leave to amend Plaintiff's FTCA claim for failure  
13 to provide medical care. See Order at 8. That Order is  
14 reaffirmed. The motion to amend, therefore, primarily turns on  
15 whether to grant Plaintiff leave to add a false imprisonment  
16 claim.

17 Plaintiff's argument in support of leave to amend is sparse.  
18 He first contends that granting leave to amend would resolve the  
19 Motion to Dismiss and save judicial resources. Mot. at 2. That  
20 point is moot. Second, he argues "[a]mending the complaint will  
21 not delay the resolution of this case nor will it impose undue  
22 prejudice on defendants." Id. at 2-3. Plaintiff did not address  
23 the futility or viability of his false imprisonment allegations  
24 even though the United States drew attention to this issue in its  
25 reply brief to the motion to dismiss. See ECF No. 19; Order at 9  
26 ("As to Plaintiff's new claim for false imprisonment, the  
27 arguments concerning the claim are best addressed in the pending  
28 Motion to Amend. The Court reserves its decision on whether to

1 allow Plaintiff to go forward on this claim until the Motion to  
2 Amend has been fully briefed and argued.”).

3 The United States argues the Court should deny leave to  
4 amend because amendment would be futile. Opp. at 1. First, the  
5 United States contends the claim is procedurally barred because  
6 Plaintiff did not include it in his administrative claim to  
7 Immigration and Customs Enforcement (“ICE”) as required under the  
8 Federal Tort Claims Act. Id. Second, it argues this Court is  
9 barred from hearing the claim pursuant to 8 U.S.C. § 1252(g),  
10 which strips courts of jurisdiction for claims arising from the  
11 Attorney General’s decision to commence proceedings, adjudicate  
12 cases, or execute removal orders against aliens. Id. at 4.  
13 Plaintiff did not file a reply to the United States’ Opposition.

14 “A federal court’s jurisdiction to hear damage actions  
15 against the United States is limited by section 2675(a) of the  
16 FTCA.” Shipek v. United States, 752 F.2d 1352, 1353 (9th Cir.  
17 1985). That section requires a claimant to present her claim to  
18 the appropriate Federal agency, and her claim must have been  
19 finally denied by writing or lapse of time before she institutes  
20 an action against the United States. 28 U.S.C. § 2675(a). The  
21 notice requirement is minimal, but a claim should contain at  
22 least the fact of the incident, injury, and a sum certain  
23 representing damages. See Shipek, 752 F.2d at 1354 (“[W]e have  
24 consistently interpreted the notice required under section  
25 2675(a) as minimal. In Avery, the court explained that ‘a  
26 skeletal claim form, containing only the bare elements of notice  
27 of accident and injury and a sum certain representing damages,  
28 suffices to overcome an argument that jurisdiction is lacking.’”)

1 (quoting Avery v. United States, 680 F.2d 608, 610 (9th Cir.  
2 1982)).

3 Plaintiff did not include the false imprisonment claim in  
4 his administrative complaint nor did he include the facts he now  
5 alleges in support of that claim. See Declaration of Joseph B.  
6 Frueh, Exh. 6, ECF No. 19-5. He did not specify any injury or  
7 damages related to such a claim. Plaintiff has not presented any  
8 additional facts or law allowing him to circumvent the exhaustion  
9 required under section 2675. Plaintiff's new FTCA claim is  
10 therefore procedurally barred. For this reason, Plaintiff's  
11 motion to amend the FTCA claim is denied.

12 C. Bivens Claim

13 Although no individual federal officers have been named in  
14 this action—the Bivens claim is alleged against Does 1-20—and  
15 although the United States is not a defendant to Plaintiff's  
16 Bivens claim, the Court will, sua sponte, consider the authority  
17 the United States cites pertaining to the Court's jurisdiction to  
18 entertain the false imprisonment allegations in Plaintiff's  
19 Bivens claim. Cf. Valencia-Mejia v. United States, No. CV 08-2943  
20 CAS (PJWX), 2008 WL 4286979, at \*4 (C.D. Cal. Sept. 15, 2008)  
21 ("The Court finds that defendant [United States] may lack  
22 standing to challenge plaintiff's Bivens claim, but nevertheless  
23 considers the issue sua sponte.") (deciding a motion to dismiss).  
24 The Court does so in light of Plaintiff's deafening silence on  
25 these significant jurisdictional questions and in the absence of  
26 any named defendants to oppose the amendment on their own behalf.

27 The United States persuasively argues that the Court's  
28 review of Plaintiff's new claim is barred by 8 U.S.C. § 1252(g).

1 ///

2 Entitled "Exclusive jurisdiction," that sub-section provides:

3 Except as provided in this section and notwithstanding  
4 any other provision of law (statutory or  
5 nonstatutory), including section 2241 of Title 28, or  
6 any other habeas corpus provision, and sections 1361  
7 and 1651 of such title, no court shall have  
8 jurisdiction to hear any cause or claim by or on  
behalf of any alien arising from the decision or  
action by the Attorney General to commence  
proceedings, adjudicate cases, or execute removal  
orders against any alien under this chapter.

9 8 U.S.C. § 1252(g). The Ninth Circuit has applied this  
10 jurisdictional bar to Bivens claims. Sissoko v. Rocha, 509 F.3d  
11 947, 949 (9th Cir. 2007) (concluding that section 1252(g) applied  
12 to the plaintiff's Fourth Amendment-based damages (Bivens) claim  
13 for false arrest); see also Valencia-Mejia v. United States, No.  
14 CV 08-2943 CAS PJWX, 2008 WL 4286979, at \*4 n.4 (C.D. Cal. Sept.  
15 15, 2008) ("Given that the Court herein finds that it has no  
16 jurisdiction under § 1252(g) to hear plaintiff's challenge to his  
17 detention, it seems apparent that, under Sissoko, the Bivens  
18 claims are also barred.").

19 Although this subsection is to be applied "narrowly,"  
20 Plaintiff's claim falls within its parameters. The Valencia-  
21 Mejia court's analysis in an analogous factual situation and is  
22 instructive. In that case, the Department of Homeland Security  
23 arrested a citizen of Mexico for being present in the United  
24 States without admission or parole. Valencia-Mejia, 2008 WL  
25 4286979, at \*1. Although he agreed to waive his right to a  
26 hearing and agreed to removal (he requested voluntary departure,  
27 see id. at n.1), he was nevertheless served with a Notice to  
28 Appear before an Immigration Judge. Id. After receiving the

1 Notice, he waived his right to a 10-day waiting period before a  
2 hearing and requested an immediate removal hearing. Id. He  
3 remained incarcerated for another month thereafter. Id. He  
4 brought a false imprisonment claim against the United States  
5 under the FTCA and a Bivens claim against Does 1 through 10 for  
6 violating his Fourth Amendment right to be free from unreasonable  
7 detention and his Fifth Amendment right to due process. Id.

8 The Valencia-Mejia court held that under 8 U.S.C. § 1252(g),  
9 it could not review the plaintiff's FTCA claims for false  
10 imprisonment and negligence. Id. at \*4. "[W]hen defendant  
11 exercised its discretion to deny plaintiff's request for  
12 immediate voluntary departure, but instead issued plaintiff a  
13 Notice to Appear before an Immigration Judge, defendant  
14 'commenced removal proceedings' against plaintiff." Id. "It  
15 follows that the decision to detain plaintiff until his hearing  
16 before the Immigration Judge arose from this decision to commence  
17 proceedings." Id. Accordingly, the Valencia-Mejia court  
18 concluded, the statute barred review of the claim.

19 The Valencia-Mejia court further noted that under 8 U.S.C.  
20 § 1229c(f), "no court has jurisdiction over an appeal from denial  
21 of a request for an order of voluntary departure." Id. It  
22 reasoned that "[b]ecause plaintiff's false imprisonment and  
23 negligence claims are essentially a challenge to defendant's  
24 failure to grant plaintiff's request for voluntary departure, the  
25 claims are not reviewable by this Court." Id. Under this  
26 statute, too, the court held that it lacked jurisdiction to  
27 review the false imprisonment and negligence claims. Id.

28 The Court finds the reasoning articulated in Valencia-Mejia

1 persuasive. Plaintiff has not argued or cited any authority to  
2 the contrary. Consequently, Plaintiff's Bivens claim premised on  
3 the ICE agents' decision to give Plaintiff a Notice to Appear and  
4 detain him, rather than immediately grant voluntary departure, is  
5 not reviewable in this Court and amendment would be futile.  
6 Plaintiff may not amend his Bivens claim.

7 D. Claims against the County Defendants

8 County Defendants do not oppose Plaintiff's motion. See  
9 Statement of Non-Opposition, ECF No. 25. Plaintiff's Second  
10 Amended Complaint adds very little to the allegations against  
11 these Defendants. See SAC ¶ 13. Leave to amend his complaint as  
12 to the County Defendants is granted.

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14 III. ORDER

15 For the reasons set forth above, the Court DENIES  
16 Plaintiff's Motion to Amend with respect to his allegations  
17 against the United States and the individual ICE agents. The  
18 United States is dismissed with prejudice as a party to this  
19 action. The Court GRANTS Plaintiff's Motion to Amend with  
20 respect to his allegations against the County Defendants.  
21 Plaintiff is ordered to file a modified Second Amended Complaint  
22 consistent with this Order within one week of the date of this  
23 Order.

24 IT IS SO ORDERED.

25 Dated: March 14, 2018

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27   
28 JOHN A. MENDEZ,  
UNITED STATES DISTRICT JUDGE